



**FILED**  
6-17-16  
04:59 PM

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

Order Instituting Rulemaking Concerning  
Energy Efficiency Rolling Portfolios,  
Policies, Programs, Evaluation, and  
Related Issues.

Rulemaking 13-11-005  
(Filed November 14, 2013)

**COMMENTS OF CODECYCLE LLC ON  
RULING OF ASSIGNED COMMISSIONER AND ADMINISTRATIVE  
LAW JUDGE SEEKING INPUT ON APPROACHES FOR  
STATEWIDE AND THIRD-PARTY PROGRAMS**

Dan Suyeyasu  
Director  
CodeCycle LLC  
55 New Montgomery, Suite 703  
San Francisco, CA 94105  
(510) 410-2457  
dan.suyeyasu@codecycle.com

Dated: June 17, 2016

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

Order Instituting Rulemaking Concerning  
Energy Efficiency Rolling Portfolios,  
Policies, Programs, Evaluation, and  
Related Issues.

Rulemaking 13-11-005  
(Filed November 14, 2013)

**COMMENTS OF CODECYCLE LLC ON  
RULING OF ASSIGNED COMMISSIONER AND ADMINISTRATIVE  
LAW JUDGE SEEKING INPUT ON APPROACHES FOR  
STATEWIDE AND THIRD-PARTY PROGRAMS**

**I. Introduction**

CodeCycle submits the following comments in response to the “Ruling of Assigned Commissioner and Administrative Law Judge Seeking Input on Approaches for Statewide and Third-Party Programs” (ALJ Ruling) of May 24, 2016.

CodeCycle offers an advanced software solution for improving the Title 24, Part 6 compliance. Our software integrates the design, construction, and inspection processes while automating much of the challenge of Title 24 interpretation and enforcement.

**II. General Comments on Statewide and Third-Party Programs**

CodeCycle supports the broad objectives of the ALJ Ruling to rethink efficiency portfolio management. The proposed changes are likely to foster greater innovation, greater cost-effectiveness, and greater energy savings. In deciding who should administer the Codes & Standards programs, we would advise treating the Code Advocacy program and Compliance Improvement program separately. As will be explained further below, there are reasons that the IOUs should not oversee Compliance Improvement strategies.

The IOUs tightly coordinate their efforts as a statewide program in the context of Codes & Standards. Given that existing integrated structure, we will mostly speak of them collectively.

To help clarify our comments, it is important to define a few tightly related but distinct concepts:

*Compliance Assistance*: the process of helping building designers, contractors, and other building professionals in meeting their obligations under Title 24, Part 6.

*Enforcement Assistance*: the process of helping building officials enforce Title 24, Part 6.

*Compliance Improvement Program*: both Compliance Assistance and Enforcement Assistance are subcomponents of a Compliance Improvement Program that can contribute to improved rates of Title 24 compliance.

The relationship between *compliance* and *enforcement* is critical for the CPUC in deciding who should oversee future Compliance Improvement Programs in the IOU service territories. Two central points, to be explained further below:

1. Effective enforcement is likely the most important driver in the entire compliance improvement chain.
2. The IOUs have stated that they will not engage in Title 24 enforcement.

Where, precisely, the line lies between permissible Compliance Assistance and impermissible Enforcement Assistance in the eyes of the IOUs is not entirely clear (permissible and impermissible defined by IOU policy, not CPUC policy). If we were to posit where the line might lie: tools that provide generalized guidance on Title 24 compliance are permissible, as is seen with Energy Code Ace, whereas tools that decipher particular Title 24 requirements for specific building attributes at a particular address are impermissible. The trigger appears to be one of the granularity and/or the precision of the assistance that is provided to building officials.

A wide array of building officials have reviewed or tested CodeCycle. They have told us, repeatedly, that they far prefer the highly precise, granular guidance provided by CodeCycle as compared to current State and IOU supplied resources (see Attachment A). The opinion of building officials hopefully carries significant weight in determining how Enforcement Assistance is advanced by the CPUC.

*Self-Imposed Enforcement Limits of the IOUs:*

The objections of IOUs to playing a role in Title 24 enforcement has been well documented in the context of SB 454. For the Little Hoover Commission, the IOUs asserted: “ ‘It

is not the role of the IOUs to act in an enforcement capacity for other jurisdictional agencies and we are unaware of any statutory or regulatory requirement that would require us to implement an enforcement program ... Collecting specific permit and license information may cause the IOUs to overreach in this respect ... Despite the IOUs not being in an enforcement role, the IOUs actively contribute to the development of a culture of compliance in California through participation in the statewide Codes & Standards Program.’ ”<sup>1</sup>

SCE contracted with the Heschong Mahone Group to complete a “SCE Codes & Standards Process and Market Assessment Study.” (2009) That SCE study explained, “While some believe it is the responsibility of the IOUs to ensure compliance, they in fact do not have the authority, *nor the desire*, to do so.” (*emphasis added*) Further, “Without becoming a policy-maker or law-enforcer, the primary role utilities can have in increasing code compliance is education and training.”

Yet the same SCE study acknowledges that this education and training focus of the IOUs can leave gaps, because “the effectiveness of compliance efforts is largely dependent on subsequent enforcement.” *Enforcement is the linchpin.*

PG&E staff echoed this sentiment in a paper to ACEEE, pointing to the critical role played by enforcement in the Compliance Improvement process: “In addition, enforcement and education are most effective if conducted in parallel. A little enforcement goes a long way towards motivating industry practitioners to learn more about how to comply with regulations.”<sup>2</sup>

To be clear, CodeCycle does not have any concerns with the hesitation of IOUs to engage in Enforcement Assistance. It may be a reasonable position for the IOUs to take with respect to their own business interests. But, from a CPUC perspective or a ratepayer perspective, an entity with such self-imposed restrictions should not be the Program Administrator for a statewide Title 24 Compliance Improvement Program. If Enforcement Assistance is a central driver of Compliance Improvement, the responsibility for Compliance Improvement is best placed in the hands of a Program Administrator that will not hesitate to provide advanced forms of Enforcement Assistance.

---

<sup>1</sup> G. William (Bill) Pennington, California Energy Commission, Testimony to the Little Hoover Commission, quoting related IOU statements: “Underground Economy: Contractors Failure to Pull Permits for Residential HVAC Replacements.” March 27, 2014

<sup>2</sup> Pat Eilert, PG&E, et al. “Standards Education and Training as a Resource Program”, ACEEE 2008

### III. Responses to Specific Questions

#### A. Questions related to overall regulatory framework for statewide and third-party programs.

1. – 2. [No comment at this time.]

**3. How should any Commission requirements for statewide and/or third-party approaches apply to non-utility program administrators (e.g., community choice aggregators (CCAs), CAEATFA, the Regional Energy Networks (RENs), CSE, etc.)?**

CodeCycle recommends that a non-utility Program Administrator serve in the role of statewide lead in the context of the Compliance Improvement Program. The Compliance Improvement Program needs a Program Administrator that will not hesitate to provide advanced Enforcement Assistance to building officials.

PG&E is likely to suggest that the IOUs should manage Compliance Assistance while the RENs manage Enforcement Assistance, as PG&E suggested in its recent comments on AB802.<sup>3</sup> While this idea has a certain equity to it amongst the potential Program Administrators, it is not in the best interest of stakeholders in the construction industry who would benefit from a more unified Compliance Assistance and Enforcement Assistance program. That approach also side-steps the CPUC's intention of consolidating program administration.

We leave it to the CPUC to decide which non-utility entity (or entities) is best suited to administer the Compliance Improvement Program. If the RENs can only offer Enforcement Assistance within their partner jurisdictions, they may be able to provide more generalized Compliance Assistance outside of their partner jurisdictions. Over time, the network of RENs could expand to cover more of the State. The geographical limitations of any particular non-IOU Program Administrator acting as a statewide lead is likely to be a curable problem. The reluctance of IOUs to engage in advanced Enforcement Assistance appears incurable.

CSE, CAEATFA, or analogous organizations could also work as the statewide Program Administrator for a future Compliance Improvement Program. They would need to do so without

---

<sup>3</sup> *Opening Comments of Pacific Gas and Electric Company (U 39-M) on Energy Efficiency Baseline Policy and Related Issues*, May 17, 2016: "The IOUs should also work with RENs in a more complementary way such that overlap is minimized. For example, IOUs can deploy statewide consistent compliance improvement training and tools, and develop statewide CEC-required cost-effective analyses for reach codes for each climate zone while RENs can work with local jurisdictions to ensure code enforcement, and lobby local governments to adopt reach codes."

oversight from the IOUs to keep the IOUs clear of participating in Enforcement Assistance efforts.

What is important, in the end, is that the Program Administrator have no significant self-imposed bounds on the type of assistance provided to building officials. The Program Administrator should also be open to shifting Compliance Improvement into a pay-for-performance framework where the opportunity to do so arises.

*4. – 6. [No comment at this time.]*

***7. How should the Senate Bill 350 requirements for market transformation programs and pay-for-performance programs factor in to our policies for statewide and third-party programs?***

The Program Administrator for the statewide Compliance Improvement program should have an interest in measuring the performance of the Compliance Improvement Program – or at least subsets of the Compliance Improvement Program – in terms of additional kWh, kW, and therm savings. Without measurement, there can be no pay-for-performance.

We observe, in contrast, that the recently released “Codes and Standards Compliance Improvement Program Years 2013-2014 Process Evaluation Final Report” (April 19, 2016) runs to 110 pages without a single mention of kWh or therms. Overall, this current process of program design and *qualitative* evaluation tends to give stakeholders in the construction industry what they ask for rather than what they – and the environment – might actually need. It enables engineering by consensus and incrementalism rather than rewarding step-change improvements in Title 24 compliance practices.

PG&E has opposed moving Compliance Improvement Programs in the direction of pay-for-performance because it does not understand how the energy benefits of Compliance Improvement could be measured. In a 2014 filing before the Commission, LGSEC suggested that the CPUC allow attribution of savings driven by Compliance Improvement programs. PG&E responded, “PG&E does not understand how allowing attribution of on-bill energy savings due to program efforts would be measured, much less how it would improve code compliance. For this reason, PG&E recommends that the Commission reject these suggestions.”<sup>4</sup> PG&E has demonstrated a propensity to dismiss without much inquiry the ability to measure energy benefits of Compliance Improvement Programs. PG&E’s conclusions in this respect are

---

<sup>4</sup> Pacific Gas and Electric Company’s (U 39-M) Reply to Opening Comments on Administrator Filings for Energy Efficiency 2015 Funding, April 17, 2014.

not only premature for the programs that PG&E assumes will be happening, PG&E's conclusions are particularly premature for a range of Compliance Improvement mechanisms that it cannot foresee.

B. Questions related to the proposals/options outlined in this ruling

Statewide Programs

***8. Is the general outline of the proposal in this ruling for statewide programs workable? Why or why not? Explain.***

There are certainly a number of issues to work through in implementing this proposal. There will be immediate successes and inevitable false starts. But it is CodeCycle's opinion that the shift in program administration is a shift worth trying in order to advance energy efficiency delivery in the State of California.

***9. – 10. [No comment at this time.]***

***11. Should the current IOU lead administrators for the statewide program areas remain the same or be changed?***

For the statewide Compliance Improvement Program, a Program Administrator other than an IOU should be selected. The inherent limitations of IOU management of the Compliance Improvement Program are outlined above.

***12. How should community choice aggregator and regional energy network areas be handled, and what should be the role of those entities with respect to interactions with statewide programs?***

We believe that the RENs should be candidates to act as the statewide Program Administrator for Compliance Improvement.

Across the broader portfolio, the RENs and CCAs could act as subcontractors to any Program Implementers to help implement programs that require a REN's or CCA's particular expertise or depth of governmental integration. For any program involving collaboration with local governments, working through the RENs could streamline the process far more than a Program Implementer trying to work independently with a wide range of jurisdictions.

***13. Are there programs, subprograms, or other functions that should be added or removed from the list of statewide programs to be assigned for non-utility competitively-bid implementation contracts? Be specific and provide your rationale.***

As noted, the Compliance Improvement program should be handled differently than the other Codes and Standards programs. Enforcement Assistance will be a core component of an

effective Compliance Improvement program, and the IOUs have proven more than reticent to actively support Title 24 enforcement processes.

***14. Should the treatment of programs and subprograms as statewide be phased in? Why or why not? If yes, which subprograms should we start with and over what period of time should others be phased in?***

Due to the comparatively small scale of the Compliance Improvement Program, we recommend that it be one of the initial components of the efficiency portfolio to be repositioned through the statewide realignment effort.

We have no comment at this time as to whether other programs should be transitioned rapidly or phased in.

***15. – 16. [No comment at this time.]***

***17. Do you agree with the idea of encouraging pay for performance elements in the contracts for selected statewide program implementers? Why or why not?***

We agree with the idea of encouraging pay-for-performance elements in the contracts. This is one of the best ways across the portfolio to prioritize programs that reward measurable energy savings.

But in further prioritizing pay-for-performance contracting, there will be some value in not linking the measured performance of a given contract to the compensation rewarded on that specific contract. It may be preferable to use measured performance as a benchmark for rewarding subsequent contracts and for setting the terms on subsequent contracts. This modest decoupling of the pay-for-performance linkage will provide some “dampening” that accounts for the inherent uncertainty in almost any energy efficiency measurement. If M&V outputs are directly tied – formulaically – to the payment made to Program Implementers, the transaction costs surrounding M&V studies and review of M&V studies could skyrocket. Taking a longer view on the pay-for-performance feedback mechanisms should reduce costs and facilitate more innovative program design.

#### Third-Party Programs

***18. Do you agree with the definition of “third-party” in this ruling? Why or why not?***

We support the definition of third-party proposed in the ruling. The emphasis on program design and implementation happening external to the Program Administrator is essential, in our experience, to fostering innovation.

***19. [No comment at this time.]***

**20. Which third-party option (Option 1 or Option 2) do you prefer and why? Or would you prefer a different option entirely? If so, describe your preferred approach.**

We strongly endorse Option 2, as Option 1 allows too much leeway for Program Administrators to continue to undertake program design and implementation in-house.

*21. [No comment at this time.]*

**22. If you prefer Option 2 for third-party approaches, would you limit the initial focus to the large commercial sector? Why or why not? Or suggest a different focus and rationale for it.**

We would recommend the third-party program implementation cover the full breadth of commercial construction. We believe this will allow greater consistency. While the commercial market can be subdivided across a range of categories, the market is, in reality, one continuum.

#### General Questions

*23. [No comment at this time.]*

**24. Are there any other elements or guidance needed from the Commission to ensure that high quality, high-value programs can be effectively implemented across the IOU service areas?**

With Program Implementers being accountable for the overall performance of their individual portfolio, it is critical that those implementers have a fair amount of flexibility in how they achieve program objectives and evolve their programs over time. Perhaps this is already contemplated, but Program Implementers may be wise to subcontract out a substantial portion of their work after securing the primary contract.

In establishing a bidding process to select Program Implementers, they should not be required to propose a complete program – with all known contracting partners – but instead be permitted to state which portions of their objectives they will, themselves, subcontract once underway. The Program Implementers would, in turn, have considerable leeway to adjust those subcontracts based on project performance.

*25. – 28. [No comment at this time.]*

#### **IV. Conclusion**

CodeCycle *strongly* supports the CPUC's efforts to restructure the administration and implementation of California's ratepayer funded energy efficiency programs. Those programs could be delivering more energy for less money than is presently the case. The quantity of measurable delivered kWh, kW, and therms could also increase far more rapidly under a more accountable and ambitious management structure.

Dated: June 17, 2016

Respectfully submitted,

/s/ Dan Suyeyasu

Dan Suyeyasu  
Director  
CodeCycle LLC  
55 New Montgomery St., Suite 703  
San Francisco, CA 94105  
Tel: (510) 410-2457  
E-mail: dan.suyeyasu@codecycle.com

## **Attachment A: California Building Officials Support for CodeCycle**

To Whom It May Concern:

Building efficiency standards are a cornerstone of California's energy policy. In theory, the efficiency standards offset numerous power plants worth of power. In practice, the standards are only as effective as they are understood by the design and construction community.

Over the past decade California's energy agencies have made the Title 24 energy standards far too cumbersome to consistently implement. We, the undersigned building officials and inspectors, have been asking for years for a more sensible approach. But the analog resources provided by the State – forms, checklists, and trigger sheets – are inadequate for managing the complexity of the standards.

We need a 21st century solution for code compliance: one that provides building-specific, data-driven guidance. I have reviewed CodeCycle, and I am impressed by how well the CodeCycle platform responds to the real compliance challenges facing practitioners. CodeCycle will help my jurisdiction more consistently fulfill the requirements of Title 24, resulting in more efficient buildings and a more efficient construction process.

**We hope California's energy agencies will work with CodeCycle to drive the fundamental change in compliance processes that we all need.**

Thank you,

### Local Building Officials

<i>Jay Salazar</i>	<i>Building Official</i>	<i>City of Vacaville</i>	<i>April 1, 2015</i>
<i>Greg Mahoney</i>	<i>Building Official</i>	<i>City of Davis</i>	<i>April 2, 2015</i>
<i>Mark Meyers</i>	<i>Deputy Bldg Official</i>	<i>City of Clovis</i>	<i>April 6, 2015</i>
<i>Bob Barks</i>	<i>Plans Examiner</i>	<i>Interwest Consulting</i>	<i>April 6, 2015</i>
<i>Jeff Janes</i>	<i>Chief Bldg Inspector</i>	<i>County of Fresno</i>	<i>April 6, 2015</i>
<i>Mark McClain</i>	<i>Building Official</i>	<i>City of Seaside</i>	<i>April 10, 2015</i>
<i>David Khorram</i>	<i>Superintendent, Bldg &amp; Safety</i>	<i>City of Long Beach</i>	<i>April 10, 2015</i>
<i>Steve Burger</i>	<i>Chief Building Official</i>	<i>City of Folsom</i>	<i>April 10, 2015</i>

<b>Randy Goodwin</b>	<i>Building Official</i>	<i>City of West Sacramento</i>	<i>April 10, 2015</i>
<b>Winfred DeLeon</b>	<i>Chief Building Official</i>	<i>City of Sacramento</i>	<i>April 10, 2015</i>
<b>Richard Renfro</b>	<i>Chief Building Official</i>	<i>City of Elk Grove</i>	<i>April 10, 2015</i>
<b>James R Rahrack</b>	<i>Senior Plan Review Engineer</i>	<i>Interwest (Elk Grove)</i>	<i>April 10, 2015</i>
<b>Ed Short</b>	<i>Building Official</i>	<i>Yolo County</i>	<i>April 10, 2015</i>
<b>Robert Logsdon</b>	<i>Supervisor</i>	<i>Sacramento County</i>	<i>April 10, 2015</i>
<b>Bob Ivie</b>	<i>Supervisor</i>	<i>Sacramento County</i>	<i>April 10, 2015</i>
<b>Sharon Goei</b>	<i>Building Official</i>	<i>City of Santa Clara</i>	<i>April 10, 2015</i>
<b>Dennis Corbett</b>	<i>Permit Center Manager</i>	<i>City of Pleasanton</i>	<i>April 14, 2015</i>
<b>Mark Soltes</b>	<i>Building Official</i>	<i>City of El Cerrito</i>	<i>April 14, 2015</i>
<b>Fred Cullum</b>	<i>Building Official</i>	<i>City of Hayward</i>	<i>April 14, 2015</i>
<b>John Latorra</b>	<i>Regional Manager</i>	<i>CSG Consulting</i>	<i>April 14, 2015</i>
<b>Greg Shriver</b>	<i>Senior Plan Check Engineer</i>	<i>4Leaf Inc.</i>	<i>April 14, 2015</i>
<b>Gabriel Linares</b>	<i>Building Official</i>	<i>City of Brea</i>	<i>April 14, 2015</i>
<b>Doug Martin</b>	<i>Inspection Manager</i>	<i>City of Livermore</i>	<i>April 15, 2015</i>
<b>Allen Lang</b>	<i>Building Official</i>	<i>County of Alameda</i>	<i>April 16, 2015</i>
<b>Mark Ellis</b>	<i>Building Official</i>	<i>City of Santa Cruz</i>	<i>April 22, 2015</i>
<b>Joe Strasser</b>	<i>Building Official</i>	<i>CSG Engineering</i>	<i>April 22, 2015</i>
<b>Mark Nolfi</b>	<i>Building Official</i>	<i>City of Belmont</i>	<i>April 22, 2015</i>
<b>Dan Paolini</b>	<i>Interim Building Official</i>	<i>City of Marina</i>	<i>April 22, 2015</i>
<b>Joe Kirkpatrick</b>	<i>Building Official</i>	<i>City of Irvine</i>	<i>April 22, 2015</i>
<b>David Doyle</b>	<i>Building Official</i>	<i>City of Fairfield</i>	<i>April 29, 2015</i>
<b>Tony Falcone</b>	<i>Chief Building Official</i>	<i>Santa Cruz County</i>	<i>April 30, 2015</i>
<b>Angeline Sickler</b>	<i>Senior Plans Examiner</i>	<i>Monterey County</i>	<i>April 30, 2015</i>
<b>Stephen Lau</b>	<i>Building Official</i>	<i>City of San Mateo</i>	<i>May 6, 2015</i>
<b>Douglas Rick</b>	<i>Building Official</i>	<i>City of Soledad</i>	<i>May 6, 2015</i>

<i>Keith Weiner</i>	<i>Building Inspector II</i>	<i>City of Mountain View</i>	<i>May 6, 2015</i>
<i>Steve Osborne</i>	<i>Plan Check Supervisor</i>	<i>City of Hayward</i>	<i>May 7, 2015</i>
<i>Homer Maiel</i>	<i>West Coast Code Consultants</i>	<i>Project Manager</i>	<i>May 8, 2015</i>
<i>Reggie Meigs</i>	<i>City of Jurupa Valley</i>	<i>Chief Building Official</i>	<i>May 11, 2015</i>
<i>Nancy Springer</i>	<i>Butte County</i>	<i>Building Div. Manager</i>	<i>May 21, 2015</i>