

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



FILED

8-08-16
04:59 PM

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

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

**COMMENTS OF THE UTILITY REFORM NETWORK
ON THE PROPOSED DECISION OF ALJ FITCH
PROVIDING GUIDANCE FOR INITIAL ENERGY EFFICIENCY
ROLLING PORTFOLIO BUSINESS PLAN FILINGS**

August 8, 2016

Hayley Goodson
Staff Attorney
The Utility Reform Network
785 Market Street, Suite 1400
San Francisco, CA 94103
Phone: (415) 929-8876
Fax: (415) 929-1132
E-mail: hayley@turn.org

TABLE OF CONTENTS

I. INTRODUCTION1

II. COMMENTS ON PROPOSED DECISION OF ALJ FITCH1

A. The PD Should Be Modified to Clarify that The Program Administrators May Propose Statewide Programs That Do Not Necessarily Track the Existing Program/Subprogram Structure.1

B. The PD Should Be Modified to Clarify the New Requirement Regarding Third Party Programs.....3

C. The PD Should Be Modified to Correct Misrepresentations of TURN’s Participation and Positions.....6

 1. *The PD Should Be Modified to Reflect That TURN and ORA Jointly Filed Comments on the Energy Efficiency Baseline Policy White Paper by Staff.*6

 2. *The PD Misstates TURN’s Position Regarding Which Entities Should Be Eligible to Administer Newly Constituted Statewide Programs.*7

III. CONCLUSION8

SUMMARY OF RECOMMENDATIONS

1. The PD Should Be Modified to Clarify that The Program Administrators May Propose Statewide Programs That Do Not Necessarily Track the Existing Program/Subprogram Structure.
2. The PD Should Be Modified to Clarify the New Requirements Regarding Third Party Programs.
3. The PD Should Be Modified to Correct Misrepresentations of TURN’s Participation and Positions.

TABLE OF AUTHORITIES

Commission Decisions

Decision 12-11-015..... 3, 4

Commission Rules of Practice and Procedure

Rule 14.3..... 1

**COMMENTS OF THE UTILITY REFORM NETWORK
ON THE PROPOSED DECISION OF ALJ FITCH
PROVIDING GUIDANCE FOR INITIAL ENERGY EFFICIENCY
ROLLING PORTFOLIO BUSINESS PLAN FILINGS**

I. INTRODUCTION

On July 19, 2016, the Commission issued the Proposed Decision of Administrative Law Judge Fitch entitled *Decision Providing Guidance for Initial Energy Efficiency Rolling Portfolio Business Plan Filings* (PD). The PD addresses four issue areas scoped as part of Phase IIB and IIIA in this proceeding, including: (1) next steps for the Regional Energy Network pilots; (2) changes to policies governing the baselines against which energy savings will be measured, pursuant to Assembly Bill 802; (3) changes to statewide and third party programs; and (4) changes to the program evaluation and utility Program Administrator shareholder incentive frameworks. Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, The Utility Reform Network (TURN) hereby submits these comments on the PD.

TURN strongly supports the PD and recommends that the Commission adopt it with the modifications set forth below. TURN also supports the modifications presented in the Comments of the BlueGreen Alliance, filed today.¹

II. COMMENTS ON PROPOSED DECISION OF ALJ FITCH

A. The PD Should Be Modified to Clarify that The Program Administrators May Propose Statewide Programs That Do Not Necessarily Track the Existing Program/Subprogram Structure.

The PD directs the program administrators (PAs) to present their planned approach for statewide programs, consistent with the Commission's new policies, in their business plans. The

¹ TURN had an opportunity to review the Comments of the BlueGreen Alliance before they were filed today.

PD instructs:

The program administrators shall present, in their business plans, their approach for each of the above programs to be delivered (at a minimum, along with any others they deem appropriate) and the proposed assignment of statewide lead administrator for each. This also means that the business plans shall be presented in one of two ways: 1) the lead program administrator could present a business plan for the statewide programs in which it will be the lead administrator, on behalf of all of the administrators, or 2) all program administrators could present identical business plans developed collaboratively for each statewide program.²

TURN supports this directive. However, TURN recommends that the PD be modified to expressly permit the PAs to deviate from the existing program and subprogram “buckets” delineated in the PD in their proposals for delivering the new statewide programs.

As the record reflects, the PAs may be able to increase portfolio efficiencies and economies of scale and scope by reconfiguring the existing statewide program activities. For instance, a bottoms-up review might indicate that measures and/or market participants currently targeted through totally separate statewide programs should be bundled together to increase savings and improve cost effectiveness by, in part, reducing redundant administrative costs, particularly where the same midstream or upstream market participants are being targeted with the same or similar measures, albeit through different programs.³ While the PD does not explicitly reject the possibility that statewide portfolio strategies might be optimized in this way, the PD could be read as anticipating a continuation of the current program framework.

Thus, TURN recommends the addition of language clarifying that PAs need not adhere to the status quo organization of specific interventions by existing programs and subprograms in their presentation of newly constituted statewide programs in their Business Plans. Rather, the

² PD, p. 56.

³ TURN Comments on Statewide and Third Party Programs, Jun. 17, 2016, p. 7; TURN Reply Comments on Statewide and Third Party Programs, Jul. 1, 2016, p. 8; PG&E Reply Comments on Statewide and Third-Party Energy Efficiency Programs, Jul. 1, 2016, p. 10.

PAs should have the flexibility – and in fact should be encouraged -- to undertake the optimization analysis recommended by TURN.

B. The PD Should Be Modified to Clarify the New Requirement Regarding Third Party Programs.

The PD would change the Commission’s requirements regarding the role of third parties in program delivery in significant ways. Currently, the Commission requires the utility PAs to put 20 percent of funding for the entire portfolio out to competitive bid to third party implementers, with this 20 percent threshold calculated based on the total portfolio budget, inclusive of EM&V costs.⁴ The PD would greatly expand the role of third parties in program design and delivery, as follows:

[W]e will ask the utility program administrators (and other program administrators, as desired) to present to us in their business plans a proposal for transitioning the majority of their portfolios to be outsourced as described by the CEEIC, with the transition completed by the end of 2020. Basically, all program design and delivery would be presumed to be conducted by third parties, unless the utility specifically made a case for why the program activity must be conducted by utility personnel.⁵

TURN supports this change, as indicated in our prior comments.⁶ However, the PD also gives potentially contradictory guidance, or at least ambiguous guidance, that should be modified so as to avoid confusion.

Specifically, the PD would translate the expectation that by 2020 “all program design and delivery would be presumed to be conducted by third parties, unless the utility specifically made a case for why the program activity must be conducted by utility personnel” into a minimum

⁴ D.12-11-015, pp. 81-82 (citing D.05-01-055 for the origin of this requirement).

⁵ PD, p. 63.

⁶ See, e.g. TURN Comments on Statewide and Third Party Programs, June 17, 2016, pp. 15-16; TURN Comments on Phase 2 Workshop 3, April 13, 2015, p. 8.

budget allocation. As explained by the PD,

[W]e will set a minimum target of 60 percent of the utility's budgeted portfolio (up from the previously target of 20 percent) to be third party designed and delivered by the end of 2020. Utility program administrators shall present their transition plans to effectuate at least this minimum level of third party delivery in their business plans for the Commission's consideration.⁷

This budget allocation directive should be clarified in three ways.

First, the Commission should indicate that the "utility's budgeted portfolio" against which the funding threshold will be measured is the total budget inclusive of EM&V (and all other cost categories), consistent with the approach taken by the Commission in D.12-11-015 in addressing the meaning of the currently effective 20 percent minimum requirement.⁸ There is nothing in the record to indicate the reasonableness of any approach other than that previously adopted by the Commission. While TURN acknowledges that the intent behind the PD is likely to apply the current methodology, as no change is indicated, we believe that this policy should be expressly stated so as to avoid confusion.

Next and perhaps most important is the need to clarify that the new policy regarding third party programs is first and foremost a change in the role of third parties in program design and delivery, which in turn should drive the anticipated change in budget allocation. The Commission should not rely on a budget allocation threshold to measure compliance with the new requirements regarding the greatly expanded role of third parties in program design and delivery. It may be that full compliance would result in a much higher budget allocation to third party programs (as defined in the PD⁹) than the 60 percent minimum target selected by the PD.

⁷ PD, p. 64.

⁸ D.12-11-015, p. 82.

⁹ PD, pp. 58-59.

The record does not permit an analysis of the reasonableness of this target, only conjecture as to whether it accurately accounts for the types of activities funded through the total portfolio budget that should reasonably remain the responsibility of the utility PAs, even under the policy changes required by the PD.

As such, TURN recommends that the PD be modified to emphasize that the primary policy change is that all program design and delivery will be presumed to be conducted by third parties, unless the utility specifically makes a case for why the program activity must be conducted by utility personnel.¹⁰ The PD should then more clearly specify that the Commission anticipates that this change in the role of third party programs will result in at least 60 percent of the total portfolio budget for each utility PA, inclusive of administrative costs and EM&V, being allocated to third party programs.¹¹ Finally, the PD should direct the utility PAs to clearly indicate in their forthcoming applications how much of their total portfolio budget will be outsourced to third party programs, whether they intend to staff any program design and/or delivery functions with utility personnel, and if so, why that approach is reasonable in light of the guidance related to third party programs provided in this forthcoming decision. With these clarifications – which TURN believes to be consistent with the approach outlined in the PD – TURN submits that the Commission will eliminate some potential sources of confusion regarding the Commission’s requirements and expectations.

Finally, the PD should be modified to ensure consistency in how the new treatment of third party programs is articulated. In the summary section on page 2, the PD explains:

The term “third party” is defined. Utility administrators are required to maintain the current 20 percent requirement for third party programs, and to present a

¹⁰ See PD, p. 63.

¹¹ See PD, p. 64.

proposal for transitioning to a 60 percent third-party-designed portfolio by 2020, in the business plans.¹²

This summary is confusing for two reasons. In contrast to the seemingly firm 60 percent requirement in this language, the PD elsewhere consistently refers to a “minimum” target of 60 percent, or “at least” 60 percent.¹³ Further, the language “60 percent third-party-designed portfolio” seems to suggest that 60 percent of all portfolio activities will be designed by third parties, whereas the primary policy change set forth in the PD is that all program design and delivery will be presumed to be conducted by third parties, unless the utility specifically makes a case for why the program activity must be conducted by utility personnel.

To correct this confusing shorthand, TURN recommends that the PD summarize the policy change as follows:

The term “third party” is defined. Utility administrators are required to maintain the current 20 percent requirement for third party programs, and to present a proposal for transitioning to a *portfolio with all program design and delivery provided by third parties, subject to certain exceptions, with at least 60 percent of total portfolio budget (all inclusive) going to third party programs* ~~60 percent third party designed portfolio~~ by 2020, in the business plans.

C. The PD Should Be Modified to Correct Misrepresentations of TURN’s Participation and Positions.

1. The PD Should Be Modified to Reflect That TURN and ORA Jointly Filed Comments on the Energy Efficiency Baseline Policy White Paper by Staff.

The PD provides a list of parties submitting opening and reply comments on May 17 and May 24, 2016, respectively, on Staff’s white paper on energy efficiency baseline policy and

¹² PD, p. 2.

¹³ See PD, p. 64, Conclusion of Law 46, and Ordering Paragraph 11.

related issues.¹⁴ While TURN filed opening and reply comments jointly with the Office of Ratepayer Advocates (ORA), the PD only lists ORA.¹⁵ Thus, for an accurate accounting of party participation, the PD should be modified to list TURN among the parties filing opening and reply comments, filing both jointly with ORA.

2. The PD Misstates TURN's Position Regarding Which Entities Should Be Eligible to Administer Newly Constituted Statewide Programs.

The PD attributes to TURN the position that “no non-utility program administrators would be eligible to be administrators [of the statewide programs] since they do not run” upstream and midstream programs.¹⁶ This is incorrect. TURN argued that the Commission should not limit eligibility for statewide administration to the utility program administrators (PAs) because non-utility entities might be better suited to the job, depending on the circumstances.¹⁷

TURN also pointed out that migrating upstream and midstream programs and interventions to the new statewide platform, but not downstream interventions, would preserve the opportunities currently enjoyed by administrators of downstream programs – including but not limited to non-utility PAs -- to use locally-tailored approaches and strategies in customer-facing programs.¹⁸ But we did not intend to suggest that non-utility program administrators would be ineligible to potentially administer a statewide program due to their current focus on downstream interventions. Accordingly, the PD should be modified to correctly reflect TURN's

¹⁴ PD, pp. 5-6.

¹⁵ The PD elsewhere correctly refers to the joint comments of TURN and ORA. *See e.g.*, PD, p. 17.

¹⁶ PD, p. 48.

¹⁷ TURN Comments on Statewide and Third Party Programs, June 17, 2016, pp. 6-9.

¹⁸ TURN Reply Comments on Statewide and Third Party Programs, July 1, 2016, pp. 3-5.

position.

III. CONCLUSION

For the foregoing reasons, TURN recommends that the Commission adopt the Proposed Decision of ALJ Fitch with the modifications and corrections presented herein. We also recommend adoption of the modifications suggested by the BlueGreen Alliance.

Date: August 8, 2016

Respectfully submitted,

By: _____/s/_____
Hayley Goodson
Staff Attorney

The Utility Reform Network
785 Market Street, Suite 1400
San Francisco, CA 94103
Phone: (415) 929-8876
Fax: (415) 929-1132
Email: hayley@turn.org