STATE OF CALIFORNIA EDMUND G. BROWN JR., *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

May 24, 2012

TO PARTIES OF RECORD IN RULEMAKING 09-11-014.

At the Commission Meeting of May 10, 2012, Commissioners Michael R. Peevey and Timothy Alan Simon stated that they reserved the right to file a concurrence in Decision 12-05-015. The decision was mailed on May 18, 2012.

The concurrence of Commissioner Peevey and the concurrence of Commissioner Simon are now available and are attached herewith.

/s/ KAREN V. CLOPTON
Karen V. Clopton, Chief
Administrative Law Judge

KVC:lil

Attachment

Concurrence of President Michael R. Peevey

Guidance on 2013-2014 Energy Efficiency Portfolios

May 10, 2012, Item 30

I came to this Commission more than ten years ago as a staunch supporter of Energy Efficiency, and I have worked hard over my tenure to make sure that EE gets the attention it deserves, not only here at the Commission but also in the boardrooms of the utilities. I am proud of the fact that I helped make Energy Efficiency first in the state's loading order and laid the foundation for our current programs, including the shareholder incentive mechanism.

After years of working on these programs, however, I felt we needed a fresh perspective to find creative new ways of doing things and to make the improvements necessary to achieve the next level of savings. That's why when Commissioner Ferron came on board, I asked him to look at the Energy Efficiency programs with a fresh set of eyes and come up with some ideas for making our programs even more successful.

This Decision is the result of that fresh perspective, and I am glad to see that Commissioner Ferron has indeed come up with some new and innovative ideas that have the potential to deepen energy savings, transform markets, and make energy efficiency accessible to more Californians. In particular, I support the new financing programs that will attract private capital, leverage ratepayer dollars and make EE more accessible to more homeowners and businesses. I also like the Decision's focus on deeper retrofits and the expansion of Energy Upgrade California into long-term market transformation program modeled after our successful California Solar Initiative.

At the same time, however, there were several aspects of the Proposed Decision that I found deeply troubling. I think the Decision is too prescriptive, it's too complicated, and it may not be workable. I'm also troubled by the concerns raised by Natural Resources Defense Council and the California Energy Efficiency Council that the reduced energy savings estimates and other changes might have the cumulative effect of reducing the overall size of our Energy Efficiency programs.

For that reason, I'm glad to see that Commissioner Ferron has agreed to add language to the Decision stating that in addition to applications adhering to this guidance document, the utilities may also file an alternative proposal. This will allow the utilities and other parties to propose and defend alternate means of program design that might achieve a better result than what the Commission has ordered. The Commission does not have to adopt those alternate proposals, but it will at least have the option to consider something else in the event that the applications resulting from this guidance Decision turn out to be unworkable.

One of the problems with our process is that we won't know the result of the guidance Decision until the utilities file their applications, by which time it may be too late to make significant changes. The new language added by Commissioner Ferron addresses this problem in a sensible way, and with that addition, I am prepared to support this Decision despite my reservations about it. I believe the Decision has many positive aspects and it is a good faith effort to move the ball ahead on energy efficiency in California.

Dated May 22, 2012, at Fresno, California.

/s/ MICHAEL R. PEEVEY
Michael R. Peevey
Commissioner

Concurrence of Commissioner Timothy Alan Simon on Item 30 D.12-05-015 Decision Giving Guidance for Investor-Owned Utilities on 2013-2014 Energy Efficiency Portfolios and 2012 Marketing, Education and Outreach

I support Decision (D.) 12-05-015 establishing the parameters by which the Investor-Owned Utilities (IOUs) will design their energy efficiency portfolios and propose 2013-2014 program budgets during the transition period. This transition Decision provides guidance for modifications to statewide third-party government partnerships and local programs and provides signals of broader changes that are expected to occur in 2015. Admirably, it moves the energy efficiency programs along a more cost-effective path, recognizing that program parameters must remain dynamic to respond to marketplace changes and technological innovations. For example, the IOU's avoided cost of energy efficiency is calculated as the cost of providing energy in the absence of an energy efficiency program. With today's markedly low trending natural gas prices,[1] the avoided cost of energy efficiency is falling, along with the cost of gas fired generation, making further examination of cost-effectiveness necessary. Effective avoided cost metrics are necessary to avoid the need to place additional steel in the ground.

D.12-05-015 clarifies that *spillover effects*[2] should be incorporated in cost-effective calculations and directs Commission staff to conduct net-to-gross (net of *free rider*)[3] screenings as part of its ex-ante project reviews. I fully support inclusion of these impacts in analyses to more accurately quantify program impacts.

I am pleased that many of my expressed concerns have been incorporated in D.12-05-015, including discussion of third-party programs, local government engagement, requirements for using community and faith based organizations, ethnic media and ethnic-owned media, as well as, workforce education and training. Previously and since the inception of these programs, the energy efficiency proceeding and the low-income energy efficiency proceeding were

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[1] $2.4 MMBtu, National Average, Platt's Gas survey, May 16, 2012.

[2] Spillover effects refer to when a customer participates in a utility energy efficiency program may also reduce energy use in other ways without the benefit of financial or technical assistance from the program.

[3] Free Rider effects refer to energy efficiency equipment that would have been installed within the year, even had program incentives not been offered.

under the purview of the same Commissioner Office, making coordination and the avoidance of duplication much easier to accomplish. Dispatched into separate Offices, as these programs currently are, compounded by communication challenges under Bagley-Keene,[4] the two Commissioner Offices, the Commission staff and interested parties must make concerted efforts to coordinate and leverage the respective proceeding programs. However I have also observed that having the Energy Efficiency docket and the Energy Savings Assistance Program/California Alternate Rates for Energy docket in separate Offices allows for better utilization of resources each Office is able to dedicate to its assigned proceeding. Going forward, we need to keep these challenges in mind particularly when we are providing statewide energy efficiency program guidance to IOUs.

This transition period is an opportunity for the Commission to meaningfully address employment creation for disadvantaged communities and supplier diversity. As such, I would have preferred this Decision to have required IOUs to include in their 2013-2014 program applications detailed plans to train and hire from diverse and historically disadvantaged communities. Requiring IOUs to describe exactly how they will meet this Energy Efficiency Strategic Plan goal would have provided stronger impetus for them to meet hiring goals. Similarly, I strongly encourage the utilities' third-party program administrators to routinely incorporate the Commission's General Order 156 goals[5] into their operations, even though this Decision does not require it.

Lastly, D.12-05-005 assigns the selection of marketing, education, and outreach program coordination to the California Center for Sustainable Energy (CCSE). It explains CCSE, an organization that I admire, was chosen because of its

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[4] The Bagley-Keene Open Meeting Act, set forth in California Government Code §§ 11120-11132, requires all State boards and commissions to publicly notice their meetings, prepare agendas, accept public testimony, and conduct meetings in public, unless specifically authorized by the Act to meet in closed session. It expressly prohibits serial communications involving less than a quorum but which taken as a whole involves a majority of the members. http://ag.ca.gov/publications/bagleykeene2004_ada.pdf.

[5] Rules Governing the development of programs to increase participation of women, minority, and disabled veteran business enterprises in procurement of contracts from utilities as required by Public Utilities Code §§ 8281-8286 http://162.15.7.24/PUBLISHED/GENERAL_DER/59939.htm.

mission-driven organization and it great experience in administering and implementing demand-side programs guided by Commission policy. It further clarifies that CCSE will only engage in design, oversight, and coordination of the program. The Decision, rightfully, directs that the marketing firms and contractors that CCSE will hire to execute and deliver campaigns and statewide messages must be selected through a competitive bidding process. I am deeply concerned, however, that the CCSE contract, itself, was awarded without competitive solicitation and, believe the CCSE contract should have been won via competitive bid. While I am not opposed to negotiated transactions achieved consistent with State contracting rules, I caution that we must be cognizant of the signals we send to markets and, in my view, the instant CCSE contract suggests the Commission considers itself above the rules it imposes on its practitioners. In this respect, D.12-05-015 is crucially deficient. I will support this Decision, however, because of the admirable greater policy objectives it also achieves.

Accordingly, I concur with this Decision and will accept the utility implementation guidance of energy efficiency programs, as outlined therein.

Dated May 23, 2012, at Fresno, California.

/s/ TIMOTHY ALAN SIMON
Timothy Alan Simon
Commissioner