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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, 2010)

COMMENTS OF THE CALIFORNIA ENERGY EFFICIENCY INDUSTRY COUNCIL (EFFICIENCY COUNCIL) IN RESPONSE TO THE ADMINISTRATIVE LAW JUDGE'S RULING SOLICITING COMMENTS ON 2013 BRIDGE FUNDING AND MECHANICS OF PORTFOLIO EXTENSION

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Audrey Chang
Executive Director
California Energy Efficiency Industry Council
436 14th Street, Suite 1123
Oakland, CA 94612
(916) 390-6413 main
(650) 847-1210 direct
achang@efficiencycouncil.org

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I. <u>Introduction and Summary</u>

The California Energy Efficiency Industry Council (Efficiency Council) respectfully submits these comments, in accordance with Rules 1.9 and 1.10 of the California Public Utilities Commission's (CPUC or Commission) Rules of Practice and Procedure and in response to the "Administrative Law Judge's Ruling" (Ruling), dated May 27, 2011. As a party in this proceeding, the Efficiency Council is submitting these individual opening comments in response to the questions posed by the Ruling. In addition, in the spirit of the Ruling's direction for parties to "meet and confer in an attempt to come to agreement on as many issues as possible" (p. 5), the Efficiency Council has been participating in settlement discussions with a number of other parties in the proceeding to try to reach common agreement on the questions presented. We are very encouraged by the progress made in these discussions thus far and hope to continue these discussions with other parties, to expand the discussion to additional parties, and to jointly filing areas of agreement in reply comments.

The Efficiency Council is a statewide trade association of non-utility companies that provide energy efficiency services and products in California.[1] Our member businesses, now

[1] More information about the Efficiency Council, including information about the organization's current membership, Board of Directors, and antitrust guidelines and code of ethics for its members, can be found at www.efficiciencycouncil.org.

numbering over 50, employ over 4,000 Californians throughout the state. They include energy service companies, engineering and architecture firms, contractors, implementation and evaluation experts, financing experts, workforce training entities, and manufacturers of energy efficiency products and equipment. The Efficiency Council's mission is to support appropriate energy efficiency policies, programs, and technologies that create sustainable jobs and foster long-term economic growth, stable and reasonably priced energy infrastructures, and environmental improvement.

The Efficiency Council's members have substantial expertise in California's energy efficiency industry and have on-the-ground experience with successfully delivering efficiency savings in the state through a variety of channels and helping California's residents and businesses lower their utility bills. Our member companies, consistent with trends experienced in the overall energy efficiency industry across the country, expect to hire at least hundreds more individuals in California in the year to come, providing a rare bright spot of employment growth in the state's otherwise stagnant economy.

The Efficiency Council appreciates the opportunity to provide these comments, and it looks forward to continuing collaboration with other stakeholders to ensure California's efficiency leadership continues and that benefits to the state's economy are maximized. The Efficiency Council's comments in response to the questions posed in the ALJ Ruling are summarized as follows:

- The Efficiency Council believes it is important for the Commission and all stakeholders to resolve the issues and context for the 2013 extension quickly, establishing an extension year process that is as simple as possible, in order to provide market continuity in 2013 and enable sufficient time for developing policy guidance, planning activities, and an on-time program start for the next cycle.
- Any regulatory delays stifle energy efficiency businesses' ability to help the state meet its energy savings, Strategic Plan, and AB 32 goals, causes confusion for and indecision by consumers, and ultimately slows the transition to a clean energy economy.
- The Efficiency Council believes it is absolutely essential that the Commission ensure that the 2013 portfolio extension facilitate uninterrupted delivery of effective programs, with the goal of providing continuity for a portfolio of cost-effective savings to customers. Inefficient patterns of program starts, stops, interruptions and suspensions are not conducive to a strong, effective, or sustainable low-carbon energy future for California.

- The Efficiency Council strongly recommends that the Commission allows for the 2013 portfolio extension to facilitate the IOU adminstrators' inclusion of new programs and ideas in addition to extending existing effective programs. With the extension creating a four-year program cycle during which market conditions are evolving, the Commission needs to allow the portfolio to keep pace with the market and pursue new opportunities for savings.

II. Responses to Questions Posed by ALJ Ruling

1. What should annual budgets during the bridge period be based on?

a. 2012 expenditures?
b. 2010-2012 average expenditures?
c. 2012 expenditures plus growth rate?
d. Other?

The Efficiency Council recommends option d, "Other," for the basis of the bridge period budgets. However, we strongly recommend that the additional year be considered an extension year of the 2010-2012 cycle rather than a bridge year or stand-alone year.

Accordingly, the budget for 2013 portfolios should be set such that it is the last year of a 2010-2013 four-year cycle whose total budget is four-thirds of the 2010-2012 three-year Commission-approved budgets for each of the IOU portfolios. This treatment of 2013 as an extension year of the 2010-2012 cycle prevents creation of an artificial boundary between the 2010-2012 cycle and the extension year, which would be harmful to the goal of market continuity for efficiency programs and continued customer savings. It will enable unspent funds from previous years of the cycle to flow into and supplement the nominal 2013 budgets and thus will allow for consideration of varying ramp-up times, especially for programs that did not start at the beginning of the 2010-2012 cycle. In this way, an extension ensures that successful programs do not experience a drop in planned funding for 2013 from 2012 levels, which might otherwise unnecessarily pause or curtail program implementation activity during the extension year.

Importantly, the Efficiency Council recommends that the 2013 budgets should be based on the 2010-2012 cycle's budgets rather than being tied to actual expenditures. Waiting for actual expenditure data to be collected through end of 2012 would prevent budgeting for an extension year that is set to start January 1, 2013 and lead to additional unnecessary delays.

2. Should unspent funds from 2010-2012 be applied to the bridge period, potentially reducing the level of new collections required? Why or why not? If so, what allocation methodology should apply to natural gas and electric revenue requirements from left over (a) natural gas Public Purpose Program surcharges, (b) electric Public Goods Charge, and (c) procurement funding sources?

The Efficiency Council strongly recommends that, yes, the unspent funds from 2010-2012 should be applied to the extension year. We recommend, however, as described in our response to Question 1, that the 2013 year portfolio budgets be set such that the for a 2010-2013 four-year cycle budget is four-thirds of the 2010-2012 Commission-approved budget, *independent* of unspent funds during 2010-2012. The unspent funds should then be used to augment the budgets for 2013, not reduce them. Based on this formula, if there are unspent funds, 2013 expenditures could be higher than 2012 expenditures. Reducing the 2013 budget compared to previous years, on the other hand, would penalize customers, whose decision-making processes do not operate in portfolio funding cycles that are chosen by policymakers. We believe it is absolutely necessary to ensure continued momentum of programs, and allowing unspent funds to supplement 2013 budgets would make the distinction of 2013 as an extension year as invisible to customers as possible and help prevent any interruptions in energy savings progress.

Regarding allocation methodology, the Efficiency Council recommends that the allocation of any available unspent funds should follow the allocation of EE funding and expenditures authorized for each IOU for the current 2010-2012 EE portfolio cycle, and that there should continue to be no distinction between the electric Public Goods Charge and procurement funding for funding electric programs.

In addition, the Efficiency Council strongly recommends that the Commission ensure that the state's transfer of natural gas Public Purpose Program's to the general fund in the state budget for FY2011-2012, as part of the current cycle, does not impact the portfolio if possible. The natural gas savings are critical for meeting the state's goals, so if funding for the programs are impacted, the Commission and stakeholders need to examine ways to adjust the corresponding goals. The Commission should work hard to protect billpayers and their funding of energy efficiency programs and to ensure similar raids of any energy efficiency funds do not occur again in the future that could affect the 2013 extension year or beyond.

3. What specific criteria should the Commission use to determine which programs to extend?
a. Track record of performance?
b. Cost-effectiveness?
c. Energy savings?
d. Other?

To ensure the extension year is as simple as possible and for specifics about the extension year to be determined at least six months prior to the start of 2013, the Efficiency Council recommends that all programs – statewide, IOU core, third party, and government partnerships – that are generally on target to achieve their goals within their budgets should continue at their 2012 budget levels subject to adjustments to reflect forecasted program performance. Programs that are exceeding expectations or operating below expectations should be re-evaluated and adjusted based on demonstrated progress or potential to succeed during the extension year based on the program's established objectives. In addition, the Efficiency Council also recommends that new programs and ideas should be included in the IOU portfolios in 2013 if warranted, and if doing so does not jeopardize the timely extension of the portfolio into 2013 and/or planning to allow for an on-time start of the next cycle in 2014.

Although all of the criteria listed above make sense and should be considered in determining which programs throughout the portfolios to extend, they should not be the only criteria used and should be taken into account in conjunction with specific considerations for each program's particular goals within the overall portfolio.

We recommend that the decision to increase or decrease a particular program's funding level, to adjust its scope of work and/or goals, or to eliminate the program, be done through a transparent process, relying on criteria and considerations appropriate to the type of program and its desired outcome. For non-IOU implemented programs, including third-party and local government partnerships, the process for decisions on adjustments to be made should also involve engagement and collaboration between the IOU and each affected program implementer, with the good-faith goal of reaching mutual understanding and agreement on program objectives being judged.

The Efficiency Council also strongly believes that determination of programs to extend into 2013 and adjustments in funding for programs in 2013 must consider the fact that some programs started after others, which may affect their relative performance. Also, considerations for which programs to extend should include addressing the need to develop new technologies, measures, approaches, etc. that will be the basis for future years' savings and in support of the Strategic Plan. With increasing goals, a key to the success of efficiency as on-going cost-effective resource is that new opportunities and program approaches are identified and are tested. If the criterion for programs is limited only to reliable, countable savings in the current cycle, there will be no motivation for administrators to encourage the development of programs that can help feed the pipeline for savings in the next cycle.

Strict cut-offs for numeric criteria should not be used, in order to take into account broader portfolio considerations. For example, decisions to extend programs need to be decided in the context of the overall portfolio goals, including consideration of portfolio gaps and market transformation efforts. Some innovative programs may be targeting and breaking into new market segments, and while they would not yet necessarily be cost-effective on a standalone basis, it may make sense to continue pursuing them as they make inroads into the market and set the stage for future savings down the road. In addition, as detailed in the response to Question 5 below, the IOUs should be required to conduct a transparent and collaborative process with the affected implementer to ensure as much as possible a shared understanding when reaching decisions regarding a particular program.

In addition to extending programs to 2013, the Efficiency Council also strongly recommends that new programs and ideas should be included in the IOU portfolios in 2013 if warranted and if doing so will not jeopardize a timely transition into either the 2013 extension year or 2014 cycle start. If funds are available through elimination or decreased funding for some current programs, the Efficiency Council strongly recommends that the Commission allow and encourage utilities to pursue either general or targeted solicitations for new programs. Although longer cycles help to minimize artificial cycle boundaries that are harmful to customers, the industry, and the state's aggressive energy saving goals, the 2013 extension will create a four-year program cycle. During this time, the market will undoubtedly change and evolve, and new ideas or programs will be needed to keep pace with changing conditions, especially if the 2013 extension year becomes a two-year extension as has been suggested by Energy Division and some parties. The Commission, while also enabling the stability and longer-term savings for customers and the industry that is made possible in longer cycles, must also ensure adequate flexibility is provided to respond to changing market conditions.

Our members have found reluctance by some IOUs to adopt new program ideas mid-cycle, no matter how worthy, due to the burdensome process of adding new program efforts to the portfolios. These opportunities to adjust portfolios and for the addition of unforeseen innovative ideas mid-cycle to support energy savings must be provided to ensure the flexibility that is necessary to deliver expected savings goals, encouraging innovation, and ensuring that portfolios are on the right track to ensure long-term savings. We urge the Commission, however, not to allow new program development and solicitations to hold up extensions of existing programs or extension of the portfolio into 2013.

4. Do parties have any specific concerns or proposals with regard to extending bridge funding contracts for the following types of programs? Do these concerns or proposals require Commission action? If so, what action is required and why?
a. Local Government Partnerships
b. Other third-party programs

The Efficiency Council believes that Commission action should not be required to extend specific program contracts of third-party programs or local government partnerships. The Commission should provide the general direction to the IOUs that the extension year applies to *all* implementers and not just "core" utility programs. In addition, rather than performing evaluations of these programs itself, the Commission should provide general guidance for criteria and/or considerations for the IOUs as portfolio administrators to follow in making decisions for extensions or modifications of these programs. The Commission should require the IOUs to collaborate with the affected program implementer when making decisions about particular programs, their effectiveness and how to adjust the programs, and to be transparent in their evaluation process, identifying how the criteria were followed and decisions made.

The Efficiency Council recommends the following specific procedures:

a) Existing IOU contracts with Local Government Partnerships and Third Party Implementers should be extended through 2013, rather than terminated at the end of 2012 and renegotiated for 2013. Extensions of contracts should be treated as though they were part of a four-year energy efficiency program cycle from 2010-

2013, amended as required based on previously defined success criteria and forecasted program performance (see discussion above).

b) The IOUs should collaborate with Local Government Partnerships and Third Party Implementers in negotiating appropriate adjustments to budgets, scopes of work, and specific goals and program objectives for the extension year based on previously defined success criteria and forecasted program performance.

c) Programs and other work that support the Commission's Long-term Energy Efficiency Strategic Plan, as appropriate, will continue through the 2013 extension year.

d) The Commission should establish a timeline for extending and amending Local Government Partnership and Third Party Implementer contracts that allows sufficient time to for the contracting parties complete their internal approval processes, revamp their staffing (if required) and execute their contract extensions and amendments with no interruption in program delivery. The Efficiency Council recommends these decisions are finalized at least six months prior to 2013.

e) The Commission should continue the current rules for shifting funds between programs and between program categories through 2013. Within these fund-shifting rules, the IOUs should consider opportunities to shift funds as appropriate between program categories, consistent with current Commission policies (including maintaining a minimum of 20% of the portfolio is implemented by competitively-bid third-party programs).

In addition, as noted above in our response to Question 3, the Efficiency Council believes that it is possible to ensure the necessary market continuity during the extension year through work with existing third parties, while also bidding out new contracts to address new ideas or gaps in the portfolio. With the Commission providing agreed-upon guidance for evaluating programs, those that are successful will continue and funds for those deemed not successful can be bid out anew.

5. If the IOUs were to submit a bridge funding request, what key information should they include to facilitate parties' review, ensure transparency, and substantiate any adjustments to their portfolios?

The Efficiency Council recommends that for each program for which an IOU is proposing an adjustment for the extension year, the IOU will file in either its bridge funding request or other applicable filing a statement explaining its proposed adjustment, which will include: (1) a list of the criteria used and considerations included; (2) the rationale for the choice of criteria; (3) the expected goals/objectives to be achieved; (4) the revised budget; and, (5) any pertinent information that would substantiate their decision. For Third Party or Local Government Partnership programs, the IOU will also include a statement noting whether the affected implementer supports or disputes the proposed program adjustment.

6. Is it feasible to update utility 2010-12 cycle high impact measures ex-ante values that consider the most recently available Evaluation, Measurement and Verification (EM&V) results in the portfolio adjustments submitted in a bridge funding request? Why or why not?

7. If most recently available EM&V results were to be used to inform changes to the program portfolios, what steps would be necessary to accomplish this task?

8. Is it feasible to update version 2008.2.05 of the 2008 Data Base for Energy Efficient Resources (DEER) with codes that are applicable in 2013, and with corrections to software errors identified by the DEER team?

Due to the interrelated nature of Questions 6, 7, and 8, the Efficiency Council has consolidated its responses to these questions.

In order to avoid unnecessary delays for the 2013 extension year, the Efficiency Council strongly recommends that the Commission freeze the ex-ante values that were used for planning for the cycle, as directed by the Commission in D.09-09-047, with the exception of updates and error corrections that are agreed upon by all parties. Last-minute updates in values, particularly for a 2013 extension simply intended to allow time to appropriately plan for the next cycle, could trigger comprehensive portfolio adjustments that could cause further delays, which we cannot afford. Rather, the extension year planning should be as simple as possible, mainly extending the current cycle, to allow the Commission and stakeholders' focus to be on the necessary policy preparation and planning for an on-time start of the next cycle.

However, the Efficiency Council supports continued EM&V as an important part of energy efficiency, and we recommend that the updated EM&V results be used, to the extent possible if produced in a timely fashion, to inform and improve the next cycle's programs.

9. Elaborate on the basis for attributing savings to goals during the bridge funding period.

The Efficiency Council recommends that the 2010-2012 energy efficiency program assumptions should remain unchanged for the one-year cycle extension through 2013. Savings should be attributed to goals consistent with the basis on which the goals were created. That is, savings attribution values and goals should remain based upon a consistent set of data.

The goals for 2013 should updated in as simple a manner as possible, but a more comprehensive goals update should be performed for 2014 and beyond.

10. Are there any other issues that have not been addressed regarding bridge year funding, mechanics, and the procedural schedule?

The Efficiency Council strongly urges the Commission to make determinations regarding the 2013 extension year as soon as possible to ensure market continuity through and into 2013. To facilitate a smooth transition into 2013, the Commission should provide the general guidance for the 2013 extension, including high-level policy guidance and procedural scheduling, in the next couple of months. Final Commission approval of the 2013 extension must be achieved at least six months prior to the start of the extension year to enable sufficient time for planning programs and working with customers. With any schedule delay, program implementers could experience unnecessary funding starts, stops, interruptions, or suspensions, all of which are harmful to businesses in the industry, hurt customers, and hinder the state's energy savings progress.

The Efficiency Council also believes it is important for the Commission and all stakeholders to quickly resolve the 2013 extension year issues in as simple a manner as possible, in order to turn our collective attention to resolving the key issues needed to plan for the next cycle as soon as possible, as is the intent of the extension year. These key issues to resolve include, among other topics, the establishment of an effective EM&V framework, examining cost-effectiveness methodologies and inputs, and updating goals. There is significant work needed and time required for developing policy guidance and completing the planning activities that will facilitate an on-time program start for the next cycle. Just as we believe it is important to avoid delays for the extension year, we also believe that any regulatory delays in planning for the next cycle could stifle energy efficiency businesses' ability to help the state meet its energy saving and AB32 goals, cause confusion for and indecision by customers, and ultimately slow the transition to a clean energy economy.

The Efficiency Council looks forward to assisting the Commission in whatever way possible as it moves forward with the portfolio extension plan.

III. Conclusion

The Efficiency Council appreciates the opportunity to offer these comments on the 2013 bridge funding and mechanics of portfolio extension. We urge the Commission to quickly resolve the issues around the 2013 extension year in a simple manner and provide appropriate high-level guidance for the 2013 extension year such that program delivery is uninterrupted. This will also allow the Commission and stakeholders to turn their attention to the necessary policy and planning issues that are needed to be resolved in a timely manner to allow for an on-time start of the next program cycle in 2014 and continued progress toward meeting the state's Strategic Plan. The Efficiency Council looks forward to working with the Commission and other stakeholders to ensure a smooth portfolio extension in 2013 and transition to the next portfolios beginning in 2014. We look forward to continuing settlement discussions with other parties, and are hopeful that we will be able to jointly file areas of agreement in reply comments.

Dated: June 16, 2011

Respectfully submitted,

Audrey Chang
Executive Director
California Energy Efficiency Industry Council
436 14th Street, Suite 1123
Oakland, CA 94612
(916) 390-6413 main; (650) 847-1210 direct
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