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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 Polices, Programs, Evaluation, Measurement, and Verification, and Related Issues.	R. 09-11-014 (November 20, 2009)

OPENING COMMENTS OF THE NATURAL RESOURCES DEFENSE COUNCIL (NRDC) ON ADMINISTRATIVE LAW JUDGE'S RULING REGARDING 2013 BRIDGE FUNDING AND MECHANICS OF PORTFOLIO EXTENSION

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Lara Ettenson
Natural Resources Defense Council
111 Sutter Street, 20th Floor
San Francisco, CA 94104
415-875-6100
lettenson@nrdc.org

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I. Introduction

Pursuant to Rules 1.9 and 1.10 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, the Natural Resources Defense Council (NRDC) respectfully submits these comments on the "Administrative Law Judge's Ruling Regarding 2013 Bridge Funding and Mechanics of Portfolio Extension," (ALJ Ruling) dated May 27, 2011. NRDC is a non-profit membership organization with over 250,000 members and online activists in California and a longstanding interest in minimizing the societal costs of the reliable energy services that Californians demand.

As noted in the ALJ Ruling and Attachment A "Energy Division White Paper - Bridge Year Funding, Mechanics, and Procedural Schedule" (Staff Whitepaper), parties and the ALJ have determined that the current program cycle should be extended for at least one year to ensure sufficient time for the planning process for the next program cycle. (ALJ ruling p.1, Staff Whitepaper p.1) NRDC strongly agrees that an additional year is needed to address key policy issues. As noted by a previous Assigned Commissioner's ruling,[1] these issues include setting the utilities' goals, updating the cost-effectiveness methodology, updating the policy rules as needed, proceeding with improvements to the evaluation, measurement, and verification (EM&V)

[1] CPUC."Assigned Commissioner's Ruling Soliciting Comments," November 17, 2010. p.2

process, and establishing a shared savings risk/reward mechanism.[2] NRDC therefore urges the Commission to proceed quickly to resolve the details of extending the current program cycle by an additional program year so that parties and staff can turn their attention to the resolution of the identified issues to ensure a successful planning process for the next program cycle.

Furthermore, NRDC recommends that the Commission consider this process to be an *extension* of the current 2010-2012 portfolio versus a "bridge funding" year that is considered independent of the current portfolio. By extending the current program cycle, instead of creating a stand-along bridge year, the Commission can focus on a streamlined and timely process that would facilitate a quick transition to an additional year of program implementation with limited disruption to the industry or customers.

II. Discussion

The following comments are influenced by conversations and draft documents with numerous other parties that have been engaging in settlement discussions over the past few weeks to determine how best to move forward with a timely and streamlined process to extend the current program portfolio. NRDC is encouraged by the group's progress towards consensus recommendations and looks forward to continuing settlement conversations with these parties, as well as any additional parties who choose to engage in the discussion, pursuant to the direction of the ALJ Ruling. (p. 4-5) Our comments below are organized in response to the questions posed by the 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?

NRDC recommends that the extension year budget be an additional one-third of the approved 2010-2012 program portfolio budget. Therefore, the budget for the 2010-2013 energy efficiency program cycle should be expanded to total four-thirds of the budgets approved for the

[2] For a further discussion of the policy issues that need to be addressed in advance of the next program cycle planning process, see NRDC. "*Comments of the Natural Resources Defense Council (NRDC) on the Assigned Commissioner's Ruling Regarding Goals, Strategic Plan, and Cost Effectiveness Update,*" December 3, 2010. pp.6-8.

respective utility program administrators in Decision 09-09-047.[3] NRDC also recommends that the final budget be set at a sufficient level to enable the utilities' to meet their required 2013 goals.

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?**

As noted above, NRDC recommends that the total budget for the 2010-2013 cycle should be four-thirds of the budget approved in D.09-09-047. To the extent that an investor-owned utility (IOU) has prior period unspent uncommitted funds available, that IOU may request CPUC authorization to use these funds to reduce the amount of energy efficiency funding collected in customer rates or to request authority to augment its energy efficiency program funding above otherwise approved amounts. Each IOU should propose the best use of any available unspent funds consistent with Commission policy.

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?

NRDC 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. Programs that are clearly exceeding expectations or operating below expectations should be re-evaluated and adjusted based on current Commission policy as well as with consideration of the additional recommendations below.

For local government or third-party programs, NRDC recommends that any modification to the funding level, adjustment to the program scope of work and/or goals, or elimination of a program should be determined through a transparent and interactive process with the affected party. Furthermore, if improvements are made to the existing Peer Review Group (PRG) process, the Commission should consider including a role for the PRG as well. We strongly support the

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[3] CPUC. A.08-07-021 et al. D.09-09-047 "Decision Approving 2010-2012 Energy Efficiency Portfolios and Budgets," p.365-366

stated role of the PRG as it can help the CPUC ensure a fair and transparent process for the third-party and local government portion of the utilities' portfolio.[4] However, as noted in the PRG report, the PRG's process could be improved.[5] Specifically, clear roles and responsibilities for each party need to be determined in advance of the process (e.g., facilitators, note takers, follow up process to unresolved items, etc.) and the process should include additional non-financially interested parties. The Commission should take this opportunity to modify the current PRG process for the extension year to explore various improvements in advance of the more extensive PRG review of third-party and local government programs that will occur during the planning process for the next program cycle.

In addition, any modifications to local government or third-party programs should rely on clear criteria including considerations appropriate to both the type of program and its desired outcome (i.e., determining the value of the program in terms of direct energy savings as well as the harder to quantify but equally important role of supporting longer term strategic plan goals). The IOUs should also file an Advice Letter explaining their proposed modifications for any program (core, third-party, or local government) for the extension year. In this filing, each IOU should include: (1) a list of the criteria and considerations used to evaluate their programs; (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 programs, the IOU should also include a statement noting whether the affected implementer supports or disputes the proposed program adjustment, so that the Commission and Energy Division (ED) will be informed of the process and any potential concerns that may require further attention.

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

[4] CPUC "Energy Efficiency Policy Manual Version 4.0," August 2008, pp.16-19

[5] PRG. "Peer Review Group Report on the 2009-2011 Energy Efficiency Applications of Southern California Edison Company, Southern California Gas Company, San Diego Gas & Electric Company and Pacific Gas and Electric Company." September 12, 2008, pp.14-15

Attachment A – NRDC Recommended Modifications to Proposed Decision

As noted above, local government and third-party programs that are meeting their goals within their budgets, including programs that support the Commission's long term strategic plan goals, should continue. NRDC also supports involving the local government partners and third-party implementers in the discussion of whether their programs are effective and how adjustments could improve the programs. Therefore, NRDC recommends that:

1. Existing IOU contracts with local governments 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 in concurrence with existing Commission policy and additional recommendations as noted in Question #3 above.

2. The IOUs should collaborate with local governments 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 existing Commission policy and additional recommendations as noted in Question #3 above.

3. The Commission should establish a timeline for extending and amending local government and third-party contracts to allow sufficient time 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.

4. The Commission should continue the current rules for shifting funds between programs and between program categories through 2013.

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?

NRDC recommends that the extension year filing by the IOUs be a compliance Advice Letter that follows the 2010-2012 compliance filing format. As noted above in Question #3, NRDC recommends that for any modifications to programs, the IOUs should include in their Advice Letters the following items: (1) a statement explaining the criteria and considerations used to evaluate their programs; (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 filing.

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?

NRDC recommends that the Commission not update the assumptions for the 2013 extension year, because there are significant remaining disputes over EM&V results that would be too time-consuming for the CPUC to resolve in time for the extension year. NRDC agrees and supports that in an ideal process, fully-vetted and approved new EM&V information should be used within program cycles to update programs on a going-forward basis to best capture the available energy savings potential. However, given the current outstanding disputes with the 2006-2008 evaluation studies (from which the updates for the extension year would likely be derived) NRDC does not support opening the extension year to modifications until such disputes regarding these values have been resolved. Otherwise, attempting to update ex-ante values for the extension year would likely mire the extension update in the same disputes that the EM&V results are in, thereby delaying the process and diverting party and Commission resources from addressing the outstanding issues that need resolution to successfully plan for the next program cycle. Instead of focusing on updating values for the extension year, we strongly urge the Commission to initiate efforts now to resolve the key disputes well in advance of the next program cycle.

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?

As noted above, NRDC strongly supports incorporating updated information to improve program design when appropriate and when updated information has been fully vetted, disputes have been resolved, and values have been approved by the CPUC. However, there continues to be significant outstanding disputes surrounding EM&V from the 2006-2008 programs that must be resolved in order to plan for the next program cycle. We are concerned that there is inadequate time to do so now and attempting to do an update would unduly divert resources from the critical tasks of resolving the numerous policy issues noted above.

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?

NRDC supports updating values where specific errors were identified and modifications were agreed to by both Energy Division (ED) and the IOUs. NRDC does not think it is feasible to update the DEER database to account for 2013 codes for the extension year as such a process requires significant time and resources. However, if the Commission determines that the 2013 codes should be integrated into the DEER database, then NRDC recommends that the Commission modify the IOUs' goals accordingly to account for that change in energy saving potential.

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

NRDC urges the Commission to ensure that any modifications to the goals are consistent with modifications to the assumptions. The current goals (which were originally determined in 2004 and updated in 2008), were adjusted based on new information that was integrated into the 2008 DEER database. Therefore, we recommend that the goals for the extension year be determined in a similar manner to how the goals were set for the 2010-2012 program cycle, while also ensuring that the allocated budgets are sufficient for the utilities to meet the newly identified goals.[6]

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

Integrating new programs mid-cycle

NRDC recommends that the Commission explore the potential for integrating new programs into the extension year where feasible to (a) replace programs that were discontinued due to insufficient progress, (b) allow for new and innovative program ideas to supplement the current portfolio, and (c) to allow implementers the opportunity to compete for utility contracts. Without an opportunity to engage in new program implementation opportunities, implementers will be required to wait an entire year before being afforded the opportunity to compete for such contracts. Furthermore, developing a process for mid-cycle additions during the extension year would allow the Commission to pilot mid-cycle adjustment processes that could be integrated into the next program cycle. Such a trial basis during the extension year would yield important information as to the logistics of mid-cycle modifications, which could be applied to future cycles if the Commission extends the program cycle beyond 3 years or determines that a rolling

[6] CPUC. A.08-07-021 et al. D.09-09-047 "Decision Approving 2010-2012 Energy Efficiency Portfolios and Budgets," p.45-46

cycle process is a more effective means of ensuring consistent and effective program implementation.

Proposed schedule for a 2013 extension year and next program cycle

Lastly, NRDC recommends that the Commission adopt a realistic schedule both for the planning and approval of the 2013 extension year as well as for the next program cycle. We offer the schedule included in Appendix A for consideration.

III. Conclusion

NRDC appreciates the opportunity to provide these comments on the extension year process and looks forward to working with stakeholders to arrive at consensus recommendations that will enable the Commission to proceed quickly to resolve the outstanding questions surrounding the extension year process.

Dated: June 16, 2011

Respectfully submitted,

Lara Ettenson, Director, CA Energy Efficiency Policy
lettenson@nrdc.org
415-875-6100

Attachment A – NRDC Recommended Modifications to Proposed Decision

Appendix A: Proposed Timeline for 2013 extension & Next Program Cycle

Activity	Target Date
• CPUC initiates public process for: o Policy rules update (e.g., cost effectiveness, PRG role, etc.) o Strategic plan potential updates/modifications	July 2011
• Ruling on the extension year	End of July 2011
• IOU file proposals for extension year	Mid August 2011
• Approval of extension year	September 2011
• Potential study for 2013-2022 completed	December 2011
• CPUC ruling on: o Policy rules (e.g., cost effectiveness, PRG role, etc.) o Strategic plan updates/modifications (if any)	December 2011
• CPUC begins public process to update: o Guidelines for portfolio applications (including reporting requirements) o Performance metrics/market transformation indicators o Ex-ante planning assumptions to be used in portfolio applications o EM&V structure and protocols for post 2013 o Risk/reward mechanism for post 2013	January 2012
• CPUC issues ruling on: o Guidelines for portfolio applications (including reporting requirements) o Performance metric/market transformation indicators o Specific updated ex-ante planning assumptions to be used in portfolio applications (DEER, RASS, CEUS, etc.) o EM&V structure and protocols for post 2013 o Risk/reward mechanism for post 2013	June 2012
• CPUC begins public process for its EM&V plans of the new portfolios (post-2013)	June 2012
• CPUC establishes goals	June 2012
• IOUs submit portfolio applications	February 2013
• CPUC approves portfolios	August 2013
• CPUC finalizes EM&V plans for post 2013 programs	October 2013
• Implementation of new portfolios begins	January 1, 2014