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, 2009)

COMMENTS OF THE CALIFORNIA ENERGY EFFICIENCY INDUSTRY COUNCIL (EFFICIENCY COUNCIL) ON THE PROPOSED DECISION AND ALTERNATE PROPOSED DECISION REGARDING PUBLIC PURPOSE PROGRAM FUNDS, PHASE III

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I. Introduction and Summary

The California Energy Efficiency Industry Council (Efficiency Council) respectfully submits these comments on the Proposed Decision of ALJ Farrar (PD) and Alternate Proposed Decision of Commissioner Ferron (APD) regarding Public Purpose Program Funds, both dated September 2, 2011. These reply comments are submitted in accordance with Rule 14.3, Rule 1.13, and Rules 1.9 and 1.10 of the California Public Utilities Commission's (CPUC or Commission) Rules of Practice and Procedure.

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 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

[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.

long-term economic growth, stable and reasonably priced energy infrastructures, and environmental improvement.

The Efficiency Council strongly urges the Commission to adopt the APD as soon as possible at its October 6, 2011 business meeting to avoid further delays and losses of valuable energy efficiency savings. We support the APD, rather than the PD, due to the higher level of resulting funding and greater flexibility with regard to continuation of the utilities' natural gas programs. These comments are summarized as follows:

- The Efficiency Council supports the Alternate Proposed Decision, rather than the Proposed Decision, since it enables the utilities to use all available unspent, uncommitted electric, natural gas, and EM&V funds to limit the curtailment of natural gas programs due to budget appropriation in SB 87.
- The Efficiency Council urges the Commission to act expeditiously to adopt the Alternate Proposed Decision at its business meeting on October 6, 2011, as natural gas programs have already been curtailed in light of the Commission's indecision, leaving savings on the table and harming relationships with customers.
- The Efficiency Council believes the Proposed Decision's recommendation for the IOUs to use up to 18% of available unspent, uncommitted electric funds for natural gas programs will result in significant funding shortfall and curtailment of natural gas programs, creating loss of momentum in many programs and difficulty achieving California's energy and climate goals.
- The Efficiency Council supports the Alternate Proposed Decision's view that the Commission's Energy Efficiency Policy Manual is not a legal requirement. Rather, it serves as a document of policy that serves the Commission but does not bind it in these unique circumstances.
- The Efficiency Council supports the Alternate Proposed Decision's view that funds shifting in these unique circumstances should not have precedential value for future rulemakings, but the proposed funding backstop is necessary to address the current unique circumstances and unexpected funding shortfall. However, we also strongly urge the CPUC to actively seek and support solutions to prevent future budget appropriation of gas PPP funds.
- The Efficiency Council supports the Alternate Proposed Decision's recommendation that in the event the funding backstop is not sufficient and further curtailment of gas programs is needed, the IOUs be allowed to file an Advice Letter justifying program prioritization and continuation of valuable natural gas programs with less favorable TRC ratings that do not rank in the order specified in the APD.
- The Efficiency Council supports the Alternate Proposed Decision's recommendation that the IOUs' energy savings goals are allowed to be adjusted if program curtailments are required.

- We urge the Final Decision to acknowledge and incorporate the positions of the Efficiency Council expressed in this proceeding leading up to this decision.

II. Discussion

The Efficiency Council supports the Alternate Proposed Decision, rather than the Proposed Decision, since it enables the utilities to use all available unspent, uncommitted electric, natural gas, and EM&V funds to limit the curtailment of natural gas programs due to budget appropriation in SB 87.

The APD of Commissioner Ferron backstops the $155 million in natural gas PPP funding that may be lost to SB 87 with funding that will be closer to full program funding than the PD. According to the APD, "By our calculation, few, if any gas PPP program cuts will be required" (APD p. 2) because it authorizes the IOUs to use all available unspent, uncommitted electric, natural gas, and EM&V funds to supplement remaining funds after the SB 87 transfer. On the other hand, the PD would result in approximately a $34 million shortfall to the programs, according to the Digest of Differences (p. A1). The Efficiency Council supports the APD's finding that the Commission "may as a matter of policy allow unspent electric EE funds to be used to make up for the loss of PPP funds," (APD p. 9). We believe the PD's restriction of such funds is in error, as the raid of gas PPP funds was an unpredicted event and the utilities' use of these funds is justified due to the unique circumstances.

In addition, we support the APD's assertion that the transfer of gas funds and not electric funds is incidental based on the gas funds' accessibility to the Legislature, not a judgment of gas programs being less deserving than electric programs (APD p. 11-12). Therefore, it is appropriate to make use of other available funding, including electric funding, to support the shortfall.

The Efficiency Council believes it is in the best interest of the state to adopt the APD in order to limit curtailment of natural gas programs and limit losses to the state's efficiency program momentum, efficiency industry, customer savings, and progress toward aggressive energy and climate goals.

The Efficiency Council urges the Commission to act expeditiously to adopt the Alternate Proposed Decision at its business meeting on October 6, 2011, as natural gas programs have already been curtailed in light of the Commission's indecision, leaving savings on the table and harming relationships with customers.

The Efficiency Council urges the Commission to adopt the APD at its business meeting on October 6, 2011 in order to halt the program curtailment that is already occurring. Several of the IOUs have already issued letters or indications to customers and contractors that the impending funding transfer is impacting their programs. In some cases, customers have been told that payments for incentive projects are being suspended or incentive programs have been discontinued. Once the APD is adopted, the IOUs and their implementation partners will be able to move forward with gas programs, thereby restoring funding, the pipeline of customer projects, and energy savings opportunities.

The Efficiency Council believes the Proposed Decision's recommendation for the IOUs to use up to 18% of available unspent, uncommitted electric funds for natural gas programs will result in significant funding shortfall and curtailment of natural gas programs, creating loss of momentum in many programs and difficulty achieving California's energy and climate goals.

The PD, in its Conclusions of Law (PD p. 19) finds that "Electric public purpose program funds can be used to fund mutually (gas and electric) beneficial gas public purpose programs." It recommends, however, that "we will use the formula for the electric and gas cost recovery expense ratio developed in D.09-09-047 as a proxy" (PD p. 12) and "use this ratio to allow PG&E and SDG&E to allocate 18% of their electric program funds to gas programs that benefit electric EE programs" (PD p. 13). The intention of the 82% electric/ 18% gas ratio in D.09-09-047 was intended to split the electric and gas savings and budgets based on the approved 2010-2012 portfolios, prior to any raid of the gas PPP funds. The Efficiency Council does not support the use of this ratio, outdated and non-applicable in the current situation, as a proxy for determining the extent to which the utilities should be able to apply available unspent, uncommitted electric funds to shortfalls in natural gas programs, especially in light of the

Strategic Plan's focus on increasing whole house/whole building programs which comprehensively require both gas and electric savings.

Allowing the utilities to use only 18% of the available funding will result in a significant shortfall and curtailment of natural gas programs that will not occur if the full funding, as recommended in the APD, is authorized for spending. If the Commission is concerned that the utilities' use of such electric funds will not benefit both gas and electric funds, we recommend that it seek more information about the programs funded by the electric programs from the utilities.

The Efficiency Council supports the Alternate Proposed Decision's view that the Commission's Energy Efficiency Policy Manual is not a legal requirement. Rather, it serves as a document of policy that serves the Commission but does not bind it in these unique circumstances.

In its discussion on the shifting of all uncommitted unspent electric funds, the APD states, "The Policy Manual – at least that language directly relevant here – is just that: a statement of Commission 'policy,' as opposed to a firm legal requirement" (APD p. 11). This important difference in interpretation of the Policy Manual offers flexibility to the Commission to adjust its policy in a means that is appropriate to this extenuating circumstance.

The Efficiency Council supports the Alternate Proposed Decision's view that funds shifting in these unique circumstances should not have precedential value for future rulemakings but that the proposed funding backstop is necessary to address the current unique circumstances and unexpected funding shortfall. However, we also strongly urge the CPUC to actively seek and support solutions to prevent future budget appropriation of gas PPP funds.

In its recommendation to allow shifting of gas and electric funding, the APD states, "This decision has no precedential value for future decision-making and is limited to the unique and unprecedented issue here, where the Legislature has for the first (and hopefully only) time authorized the transfer of PPP funds to help backstop state General Fund deficits" (APD p. 11).

The Efficiency Council supports this statement and specifically recommends that all of the Commission's decisions regarding these unique circumstances be treated as a one-time solution, focused only on the current fiscal year. Extension year and future portfolio cycle solutions should be considered independently of these short-term measures.

However, the CPUC should also actively seek and support solutions to prevent future budget appropriation of gas PPP funds and protect customers. The Efficiency Council also hopes that this year's budget raid of gas PPP funds was a first and only occurrence, but remains concerned that future budget transfers may be likely. We strongly urge the Commission to include support for protection of customer gas PPP funds, such as that proposed by SB 939 (Wright) in this year's legislative session, in its final decision on this matter.

The Efficiency Council supports the Alternate Proposed Decision's recommendation that in the event the funding backstop is not sufficient and further curtailment of gas programs is needed, the IOUs be allowed to file an Advice Letter justifying program prioritization and continuation of valuable natural gas programs with less favorable TRC ratings that do not rank in the order specified in the APD.

The Efficiency Council supports the APD's Ordering Paragraph 3, "Should it result that there needs to be any cut in gas Public Purpose Program funding once final numbers are tallied for Pacific Gas and Electric Company, San Diego Gas & Electric Company, and/or Southern California Gas Company, that utility shall propose to curtail programs in the order this decision directs" (OP 3, p. 21), where the order of priority is "(1) ARRA programs; (2) programs with commitments predating July 2011; and (3) programs with the best TRC rating, unless the IOU justified in the Advice Letter inclusion of a program or programs with a less favorable TRC rating" (APD p. 17). Although we are hopeful that the funding allowed by the APD will be sufficient to backfill the gas PPP funds lost in the budget transfer, we recognize that program prioritization may still be needed if the funds aren't sufficient to fully fund the gas programs as originally planned and approved.

The Efficiency Council supports the Program Prioritization aspect of the APD rather than the PD, which specifies the prioritization order as "(1) ARRA programs, (2) programs with commitments predating July 2011; and (3) programs with the highest TRC rating," (PD p. 16-

17). The APD acknowledges the need for greater latitude than the TRC rankings alone afford by allowing the IOUs flexibility to justify programs with less favorable rankings. Under the APD framework, the IOUs, as administrators of the natural gas program portfolios, are able to assess whether certain programs with lower TRCs may otherwise be wise to continue, and recommend the prioritization of programs in what is hopefully a transparent manner.

The Efficiency Council supports the Alternate Proposed Decision's recommendation that the IOUs' energy savings goals are allowed to be adjusted if program curtailments are required.

The Efficiency Council supports the APD recommendation (OP 3, APD p. 21) that the IOUs file Tier 3 Advice Letters in the case that the additional funding allowed to backstop the transfer of PPP funds is not sufficient to prevent curtailment of programs, identifying specific program curtailment and associated reduction in utility energy savings. This recommendation is consistent with SB 87 language, "To the extent such program activities and requirements are suspended for a gas corporation's programs and the gas corporation has not secured a different source of funding authorized by the CPUC, that gas corporation shall be relieved of the obligation to meet and shall not be held responsible for the program goals for the period of time affected by the transfer" (Item 8660-011-3015, p. 617). It is appropriate that the IOUs' gas goals be adjusted downward if program curtailment is required.

We urge the Final Decision to acknowledge and incorporate the positions of the Efficiency Council expressed in this proceeding leading up to this decision.

The Efficiency Council has been an active stakeholder in this proceeding, submitting Comments and Reply Comments to the Assigned Commissioner's Ruling (July 21, 2011 and July 28, 2011, respectively), including comments on the IOUs' July 1, 2011 motion to shift unspent funds. We recommend that the Commission acknowledge and incorporate the Efficiency Council's positions and contributions in the Final Decision as they are not currently acknowledged in the PD nor APD.

With regards to allowing the utilities to use unspent funds to support ongoing programs, the Efficiency Council recommends the following modification of the Discussion in Section 3.1 (APD p. 6-7) based on our July 21, 2011 Comments (p. 5) and July 28, 2011 Reply Comments (p. 4) on the ACR:

> While all parties agree that the Commission can and should direct that unspent funds be used to augment the funds remaining after a transfer pursuant to SB 87, parties disagree about what further actions should be taken to increase the amount of gas PPP funds available. For example, the IOUs argue that the approach presented in their Motion results in substantially more revenue for gas PPPs, and represents the most efficient, timely, and equitable plan for addressing any potential gas PPP budget shortfalls that could result from SB 87. The Natural Resources Defense Council (NRDC) and the California Energy Efficiency Industry Council (Efficiency Council) support~~s~~ the IOUs' Motion and urge~~s~~ the Commission to focus on providing sufficient funding to carry out the gas PPPs.

With regards to allowing the shifting of electric funds to natural gas programs based on the Commission's policy strategy for supporting whole house retrofits, the Efficiency Council recommends the following modification in Section 3.1.3.3 of the APD (p. 12) to reference our Reply Comments (p. 5-6) on the ACR:

> However, the Commission's EE Strategic Plan focuses on an increasing ratio of "whole house" retrofits to meet the state's long-term EE goals. It would be inconsistent with the policy the Commission adopted in support of this goal when it adopted the Strategic Plan, therefore, to go back to a "balkanized" view of gas and electric funding here. As the Efficiency Council indicated, performing only electricity upgrades when service providers are already in the home or building leaves significant cost-effective natural gas opportunities on the table, which does not make sense for customers, ratepayers, or for the State.

With regards to the APD's discussion of program prioritization in Section 3.2 (APD p. 16), the Efficiency Council indicated support for flexibility regarding program prioritization in our Comments on the ACR (p. 4). We recommend acknowledging stakeholders in addition to the IOUs in the following statement:

> We are, however, sympathetic to the IOUs' and other parties' (including the Efficiency Council) assertion that programs with strong TRC numbers may not always be the programs we should maintain. Because of the way TRCs are calculated, programs with short-term energy savings may score higher than other programs that cost more but have longer, deeper energy savings.

III. Conclusion

The Efficiency Council urges the Commission to adopt the APD at its October 6, 2011 business meeting and appreciates the opportunity to offer these comments on the PD and APD regarding the reduction in PPP funding. The Efficiency Council believes it is critical to reduce as much as possible the harm to customers and businesses due to SB 87's transfer of up to $155 million from the Gas Consumption Surcharge Funds. We also urge the Commission to ensure that the Final Decision acknowledge and incorporate the positions of the Efficiency Council expressed earlier in this proceeding leading up to this decision. The Efficiency Council looks forward to working with the Commission and other stakeholders to ensure the continuity of natural gas efficiency programs in the portfolio in order to help meet the state's energy goals, Strategic Plan, and AB32 goals.

Dated: September 22, 2011

Respectfully submitted,

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