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

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| Order Instituting Rulemaking on the Commission's own motion to determine the impact on public benefits associated with the expiration of ratepayer charges pursuant to Public Utilities Code Section 399.8. | Rulemaking 11-10-003<br>(Filed October 6, 2011) |

# REPLY COMMENTS OF THE CALIFORNIA ENERGY EFFICIENCY INDUSTRY COUNCIL (EFFICIENCY COUNCIL) IN RESPONSE TO THE ORDER INSTITUTING RULEMAKING REGARDING IMPACT ON PUBLIC BENEFITS ASSOCIATED WITH THE EXPIRATION OF PUBLIC GOODS CHARGE

October 25, 2011

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## I. Introduction and Summary

The California Energy Efficiency Industry Council (Efficiency Council) respectfully submits this reply to comments submitted October 20, 2011 by parties in this proceeding in response to the "Order Instituting Rulemaking on the Commission's own motion to determine the impact on public benefits associated with the expiration of ratepayer charges pursuant to Public Utilities Code Section 399.8" (OIR), filed October 6, 2011. The OIR requests comments on its enclosed preliminary scoping memo regarding the public benefits and options going forward for programs impacted by the loss of the Public Goods Charge (PGC). These reply comments are submitted in accordance with 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

[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. The views expressed by the Efficiency Council are not necessarily those of its individual members.

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 appreciates the opportunity to provide these reply comments,[2] 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. These comments are summarized as follows:

- The Efficiency Council agrees with many parties that the Commission should act expeditiously in Phase 1 to ensure continued near-term funding at current levels for RD&D programs after the expiration of the PGC on January 1, 2012. Any curtailment or gap in funding would put at risk the continued pipeline of new technologies and strategies required to support the state's clean energy and climate goals.
- The Efficiency Council supports the views of several parties, including DRA, TURN, University of California, and NRDC et al., that the California Energy Commission should continue administering state-wide energy RD&D through the PIER program, at least until Phase 2 evaluation is completed. We also agree with NRDC et al., SVLG et al., and University of California that the program should be subject to periodic five-year reviews.
- The Efficiency Council agrees with CLECA, PG&E, SDG&E, and TURN that the Commission must structure the continued funding of RD&D in such a way as to ensure that it can only be used for its intended energy RD&D purposes and cannot be redirected to the state's general fund.

[2] The parties to which we respond in these reply comments include California Large Energy Consumers Association (CLECA), California Manufacturers and Technology Association (CMTA), Consumer Federation of California (CFC), Division of Ratepayer Advocates (DRA), Joint Parties of Natural Resources Defense Council, the Union of Concerned Scientists, The Vote Solar Initiative, Sierra Club California, Californians for Clean Energy and Jobs, and The Nature Conservancy (NRDC et al.), Pacific Gas & Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Joint Parties of Silicon Valley Leadership Group, CleanTECH San Diego, Clean Economy Network, CALSTART, TechNet, and Californians for Clean Energy and Jobs (SVLG et al.), Southern California Edison (SCE), The Utility Reform Network (TURN), and the University of California.

## II. <u>Responses to Comments Submitted by Parties in Response to Oct. 6, 2011 OIR</u>

**The Efficiency Council agrees with many parties that the Commission should act expeditiously in Phase 1 to ensure continued near-term funding at current levels for RD&D programs after the expiration of the PGC on January 1, 2012. Any curtailment or gap in funding would put at risk the continued pipeline of new technologies and strategies required to support the state's clean energy and climate goals.**

The Efficiency Council supports what appears to be agreement among most parties filing October 20, 2011 comments addressing RD&D that the Commission should act expeditiously to ensure uninterrupted delivery of effective electricity RD&D programs. The Division of Ratepayer Advocates (DRA), Pacific Gas & Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Silicon Valley Leadership Group et al. (SVLG et al.), Natural Resources Defense Council et al. (NRDC et al.), The Utility Reform Network (TURN), and the University of California (UC) all support at least near-term continuation of funding to backfill the state's RD&D program funds that would have come through collection of the Public Goods Charge (PGC), which expires on January 1, 2012. Failure to continue the funding risks the continued pipeline of new technologies and strategies required to support the state's goals of a clean, reliable and reasonably priced energy infrastructure, as well as specific goals of prioritizing cost-effective energy efficiency in the loading order, the 33% renewable portfolio standard, and AB 32 emissions reductions.

The parties above agree on the near-term need to continue funding for a state energy RD&D program due to the significant value to the state and ratepayers and the numerous public benefits at risk with curtailment or cancellation of funding. DRA indicates it has not identified any state laws that would "expressly preclude the Commission from continuing reasonable and justifiable surcharges for the purposes of funding RD&D" (p. 6) and recommends continuation of funding for an interim period bridge funding for existing projects until December 31, 2012 or until Phase 2 of proceedings resolves funding and administration (p. 7). TURN also supports continued funding through the end of 2012 (p. 1) with reevaluation of additional funding needs after the 2012 Legislative session (p. 4). NRDC et al. and the University of California support funding with evaluation and modifications during Phase 2 (NRDC et al. p. 3, UC p. 9-10).

At minimum, the Efficiency Council urges the Commission to ensure no gap in funding for 2012 for the state's RD&D program. However, we also recommend the Commission avoid limiting its decision in Phase 1 to only 2012 funding, which would not provide the long-term stability necessary for energy research, and instead indicate plans for longer-term funding, preferably for 10 years. We also recommend the Commission allow for assessment of program design and modifications during Phase 2 since we agree with TURN, NRDC et al., and UC that there are improvements to be made in the current program.

Although several parties, including California Large Energy Consumers Association (CLECA), California Manufacturers and Technology Association (CMTA), Consumer Federation of California (CFC), and Southern California Edison (SCE) oppose continued RD&D funding on the grounds that the Legislature provided direction to end surcharges for public benefit programs, the Efficiency Council believes that the Commission continues to have the authority and responsibility to continue funding the programs in question, especially as they relate to the research and development of cost-effective energy efficiency solutions. CFC argues that the Commission would be "usurping legislative power" to collect funds from ratepayers (p. 8) and SCE questions "whether the Commission has the authority to impose the same PGC the Legislature determined should expire" (p. 8).

As DRA indicates, however, Section 381 of the Public Utilities Code provides authority to impose a surcharge for "public interest research and development not adequately provided by competitive and regulated markets," even though the specific surcharge for the PGC under Section 399.8 will sunset (p. 3-4). NRDC et al. also argues that under Public Utilities Code Section 729, through the administrative hearing process, the Commission can "establish new rates, classifications, rules, contracts, or practices or schedules" and in Section 454, "approve a public utility's application for a new rate." NRDC et al. also indicates that in Section 740, the Commission has explicit authority to provide for RD&D in setting the rates (p. 5). In addition, NRDC et al. points out that the Commission has constitutional and statutory authority to maintain RD&D, stating that it is "necessary to meet its statutory obligation of reducing societal costs of reliable electrical generation, maintain its competitive edge as a clean technology leader for the country, achieve all cost effective energy efficiency, meet California's 33% RPS, and achieve the greenhouse gas reductions required by AB 32" (p. 4).

As the Efficiency Council stated in its comments regarding PGC backfill for energy efficiency programs under R.09-11-014, while the legislature did not act this year to extend the PGC, it also neither acted to end customer-funded energy program funding nor did it change any of the existing statutory and policy mandates for the Commission to pursue cost-effective energy efficiency programs as the top priority energy resource in California. Under the Commission's existing statutory mandate to oversee the IOUs' procurement of all energy resources in the state, the Commission is still obligated to prioritize cost-effective energy efficiency for meeting the state's energy needs.[3] The legislature did not take any action that changes these or other relevant statutes or policies. As a result, the Commission must continue to ensure adequate and consistent funding that fulfills its mandate for all "cost-effective and feasible" energy efficiency; RD&D is a vital element of the continuum for ensuring ongoing capture of cost-effective energy efficiency. Collecting ratepayer funds to implementing RD&D programs that include support for the continued pipeline of energy efficiency solutions that lower ratepayers' energy bills and create numerous other public benefits would not be counter to the legislature's actions.

**The Efficiency Council supports the views of several parties, including DRA, TURN, University of California, and NRDC et al., that the California Energy Commission should continue administering state-wide energy RD&D through the PIER program, at least until Phase 2 evaluation is completed. We also agree with NRDC et al., SVLG et al., and University of California that the program should be subject to periodic five-year reviews.**

The Efficiency Council agrees with DRA, TURN, University of California, and NRDC et al. that due to the existing expertise and administrative capabilities of the California Energy Commission, it should continue to administer the state's energy RD&D under the Public Interest Energy Research (PIER) program with funding authorized by the CPUC. We believe the PIER program is a successful program, although improvements can and should be made, and the existing infrastructure and expertise of the Energy Commission should be leveraged to best the support the state's energy RD&D needs. As NRDC et al. states, the PIER program "brought in

[3] Pub. Util. Code § 454.5(b)(9)(C).

$70 for every $1 that billpayers invested in 2010" (p. 6) and its benefit-to-cost ratio is comparable to results by other organizations with similar mandates (p. 7-8).

The Efficiency Council also supports these parties' suggestions that the Energy Commission should evaluate and make modifications to the PIER program to strengthen its operations. The University of California recommends greater reliance on competitive peer-reviews for research (p. 9) as well as an immediate comprehensive independent review of the PIER program overall (p. 11), while NRDC et al. recommends periodic five-year reviews and a variety of other improvements (p. 10, 21-25). SVLG et al. also recommends enactment of RD&D funding in ten-year increments with a review at five years (p. 5). DRA specifically indicates that the Commission should support PIER through Dec. 31, 2012 while evaluating what form it takes after 2012 (p. 2, p. 7). The Efficiency Council supports an independent review of the PIER program in the near term, as well as periodic five-year reviews of the program going forward. We recommend that the Commission not limit its decision in Phase 1 to a specific timeframe for the Energy Commission to administer the PIER program, nor delay its Phase 1 funding decision in order to first fully consider PIER modifications; modifications to improve efficacy of the program can begun to be considered in Phase 1 but are more appropriately more fully considered in Phase 2.

The Efficiency Council notes that SDG&E also supports the Energy Commission's administration of the PIER program, though it recommends only 50% of the funding be used by the Energy Commission for longer-term, basic research and early product development, while the other half should be retained by the IOUs for prototype testing and demonstration. (p. 5). If utilities have sole access to a portion of RD&D funding and/or the research results, we believe that would limit the potential benefits that could be gained through availability of the larger funding pool and research results to a broader set of players. Utilities, however, are also key players in the industry and should be encouraged to participate in the state's RD&D programming. As a result, we recommend that the Commission not make SDG&E's suggested change regarding half of the RD&D funding during the short evaluation period in Phase 1 of this proceeding, and consider such suggestions in Phase 2 as part of the two Commisions' development of longer-term goals and strategic plan for the state's RD&D program.

**The Efficiency Council agrees with CLECA, PG&E, SDG&E, and TURN that the Commission must structure the continued funding of RD&D in such a way as to ensure that it can only be used for its intended energy RD&D purposes and cannot be redirected to the state's general fund.**

Given the recent situation addressed in D.11-10-014, in which the Commission had to backfill the significant portion of the state's natural gas energy efficiency funds raided in the 2011-2012 California budget, we strongly support the views expressed by CLECA, PG&E, SDG&E, and TURN that the Commission must establish and make clear its intentions to have a funding source and structure for RD&D that is not susceptible to transfers to the general fund for use on unrelated purposes. TURN's recommendation is for funds authorized for collection to be retained by the IOUs until they are needed to pay for program awards made by the Energy Commission – by retaining funds with the IOUs, the program avoids the risk of ratepayer funds being transferred to the state general fund (p. 3). As SDG&E explains, "money our customers pay toward public goods programs should be used only for those programs" (p. 3), also suggesting that IOUs should collect funds and reimburse the Energy Commission (p. 5). While CLECA does not generally support the backfilling of the funding shortfall due to PGC expiration, it does agree that if funding is continued, it should not be housed in the state treasury like the current PIER RD&D funding is today, which would enable it to be redirected to the general fund as happened with the natural gas funding (p. 9). The Efficiency Council agrees with these parties and urges the Commission to consider how to structure the continued funding of RD&D in such a way as to ensure that it can only be used for its intended energy RD&D purposes and cannot be redirected to the state's general fund.

## III. Conclusion

The Efficiency Council appreciates the opportunity to offer this reply to comments on the Order Instituting Rulemaking and preliminary scoping regarding whether and how the Commission should act to preserve funding for public benefits previously provided by the PGC. Efficiency Council believes it is critical to maintain stability in funding for RD&D programs that include energy efficiency in order to meet the state's energy and greenhouse gas reduction goals, as well as ensure savings for consumers and creation of jobs and economic benefits. The

Efficiency Council looks forward to working with the Commission and other stakeholders to ensure the continuity in the state's energy efficiency programs.

Dated: October 25, 2011

Respectfully submitted,

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**VERIFICATION BY DECLARATION**

I, Audrey Chang, am a representative of the California Energy Efficiency Industry Council. I am authorized to make this verification on behalf of this organization, and am making the verification because I am the lead representative in this proceeding and have unique personal knowledge of certain facts stated in the foregoing document.

Accordingly, under penalty of perjury, I hereby declare that I have read and reviewed the attached document, and that, to the best of my knowledge, information and belief, the information set forth therein is true and correct.

Dated: October 20, 2011

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