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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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
(Filed October 6, 2011)

**COMMENTS OF THE CALIFORNIA ENERGY EFFICIENCY INDUSTRY COUNCIL
(EFFICIENCY COUNCIL) IN RESPONSE TO THE PROPOSED "PHASE 1 DECISION
ESTABLISHING INTERIM RD&D AND RENEWABLES PROGRAM FUNDING
LEVELS" ASSOCIATED WITH THE EXPIRATION OF PUBLIC GOODS CHARGE**

December 5, 2011

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I. Introduction and Summary

The California Energy Efficiency Industry Council (Efficiency Council) respectfully submits these comments on ALJ Gamson’s Proposed “Phase 1 Decision Establishing Interim Research, Development, and Demonstration, and Renewables Program Funding Levels” (Proposed Decision or PD), dated November 15, 2011 and associated with the expiration of the Public Goods Charge (PGC). These reply comments are submitted in accordance with 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 about 60, 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.energycouncil.org. The views expressed by the Efficiency Council are not necessarily those of its individual members.

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

The Efficiency Council strongly supports the PD's recommendation to set up a new mechanism to collect funds for research, development and deployment (RD&D) to ensure a continued pipeline of benefits and. We urge the Commission to adopt the PD as soon as possible at its December 15, 2011 business meeting to avoid any gaps in funding that would jeopardize the public energy research needed to support energy efficiency and the state's broader energy, climate and economic development goals. Our comments are summarized as follows:

- a) The Efficiency Council urges the Commission to act expeditiously to adopt the Proposed Decision at its business meeting on December 15, 2011, before the PGC expires in order to ensure a smooth transition and continued RD&D activities into 2012.
- b) The Efficiency Council strongly supports the PD's proposal for continuing electric RD&D funding at current levels for the same general purposes, including energy efficiency. We appreciate the PD's acknowledgement and incorporation of Efficiency Council's opening comments regarding the need to continue the pipeline of technologies and strategies that benefit from RD&D programs.
- c) The Efficiency Council supports the PD's view that the Commission has authority to direct the utilities to collect funds and to transfer them to an administrator of the RD&D or renewables programs.
- d) The Efficiency Council urges the Commission to adhere to the anticipated Phase 2 decision schedule for RD&D and not delay the initial Phase 2 decision past the end of the first quarter of 2012 to ensure as much time as possible for planning and transition to post-2012 RD&D programs, particularly if there are substantive changes in the program that are adopted in the initial Phase 2 decision.
- e) The Efficiency Council recommends that the Commission indicate its intent for collection of some level of RD&D funds to extend longer than one year, although we understand that further detail needs to be developed. We are concerned that by the time the funding levels, governance, allocation, and programmatic decisions are made in Phase 2, there will be only a few months until funding expires again and RD&D contracts need more than a few months of certainty to effectively accomplish their goals.

II. Discussion

- a) **The Efficiency Council urges the Commission to act expeditiously to adopt the Proposed Decision at its business meeting on December 15, 2011, before the PGC expires, in order to ensure a smooth transition and continued RD&D activities into 2012.**

The Efficiency Council urges the Commission to adopt the PD at its business meeting on December 15, 2011. Adopting the PD and the new, interim Electric Program Investment Charge (EPIC) before the PGC expires on January 1, 2012 will ensure a smooth transition for RD&D activities into 2012. The state-funded and administered RD&D programs support a pipeline of continued cost-effective energy efficiency savings through new technologies and strategies, and expeditious action by the Commission is needed in December to avoid a funding gap that would interrupt such progress. Once the PD is adopted, the Commission and stakeholders can move on to addressing the details of the program in Phase 2.

- b) The Efficiency Council strongly supports the PD’s proposal for continuing electric RD&D funding at current levels for the same general purposes, including energy efficiency. We appreciate the PD’s acknowledgement and incorporation of Efficiency Council’s opening comments regarding the need to continue the pipeline of technologies and strategies that benefit from RD&D programs.**

The Efficiency Council supports the PD’s proposed establishment of the EPIC “at the same levels as for the current public goods charge, after subtracting the energy efficiency component” (p. 2), which will fund an estimated \$70.4 million for RD&D programs in FY 2011/2012 that would have come from the electric PGC (p. 4). As we indicated in our opening comments and as the PD acknowledges, “it is important that we act in Phase 1 of this proceeding to continue to collect funds at current levels to avoid a curtailment or gap in funding that would put at risk the continued pipeline of new technologies and strategies required to support the state’s clean energy and climate goals” (p. 10).

- c) The Efficiency Council supports the PD’s view that the Commission has authority to direct the utilities to collect funds and to transfer them to an administrator of the RD&D or renewables programs.**

In the discussion of legal authority, the PD states, “At this time, we determine that we have sufficient authority to require the utilities to impose a new rate component for RD&D and renewables programs under our Constitutional authority, and under Sections 701, 701.1, 701.3, 740, 740.1 and other relevant code sections specific to RD&D and renewables programs” (p. 21;

Conclusion of Law 3). The Efficiency Council supports this view that although the funding authority in Section 399.8 expires as of January 1, 2012, the Commission has separate funding and regulatory authority under which to establish a charge by electric utilities to ensure continuation of the ratepayer and public benefits associated with the expiring collection of the PGC. We also support the Commission's view that while it cannot (and should not) delegate its authority and responsibilities, it does have the authority to transfer the day to day administration of a program (p. 23; Conclusion of Law 5).

- d) The Efficiency Council urges the Commission to adhere to the anticipated Phase 2 decision schedule for RD&D and not delay the initial Phase 2 decision past the end of the first quarter of 2012 to ensure as much time as possible for planning and transition to post-2012 RD&D programs, particularly if there are substantive changes in the program that are adopted in the initial Phase 2 decision.**

The PD would defer decisions on several important elements of a continued RD&D program to Phase 2 of this proceeding. Among these are the functions and governance of the RD&D programs now funded by the PGC, the level of funding, and programmatic guidance, which are scheduled to be initially decided in the first quarter of 2012 with subsequent decisions at a later date. While we strongly support the PD's current decision regarding ongoing collection of funds under a new interim 2012 EPIC rate component, all of the parties involved require clear direction in early 2012 in order to plan for the remaining months of 2012 and for post-2012 programs, before the interim EPIC charge would expire and risk disruption to the continued pipeline of new technologies and strategies. As a result, we strongly urge the Commission to adhere to the proposed schedule of a January 2012 staff report, opportunities for parties to comment, and initial Phase 2 decision in the first quarter of 2012. It is especially important to adhere to the schedule if early discussions indicate that substantive changes in governance, funding, or programming are likely in 2012.

- e) The Efficiency Council recommends that the Commission indicate its intent for collection of some level of RD&D funds to extend longer than one year, although we understand that further detail needs to be developed. We are concerned that by the time the funding levels, governance, allocation, and programmatic decisions are**

made in Phase 2, there will be only a few months until funding expires again and RD&D contracts need more than a few months of certainty to effectively accomplish their goals.

The PD would establish the EPIC on an interim basis until further action by the Commission, which is anticipated in Phase 2, and states that if the Commission does not act to continue or modify it, EPIC will expire on January 1, 2013. The Efficiency Council recommends that the Commission indicate its intent to continue RD&D funding beyond one year even if the program and funding details cannot be determined at this time. As the PD indicates, RD&D programs create significant public and ratepayer benefits, which are of value to the state. We are concerned that Phase 2 discussions on funding levels, governance, allocations, and programming may take some time to reach a conclusion, which creates uncertainty for the ongoing RD&D contracts and for the continued pipeline of new RD&D projects. Even with an initial Phase 2 decision in the first quarter, a final structure for the 2012 RD&D program may not be reached until a later date, and it is currently unclear in the PD whether the Commission intends for the decisions in Phase 2 to carry into a post-2012 period. We recommend that the Commission indicate in Section 5 of the PD (Next Steps) its intent for continuation of RD&D programs post 2012 with details to be determined in Phase 2.

III. Conclusion

The Efficiency Council appreciates the opportunity to offer these comments on the PD that would continue funding for public benefits previously provided by the PGC and we urge the Commission to adopt the PD at its December 15, 2011 business meeting. The 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 climate 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 continuity in the state's programs that support energy efficiency.

Dated: December 5, 2011

Respectfully submitted,



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