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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, 2009)

COMMENTS OF THE CALIFORNIA ENERGY EFFICIENCY INDUSTRY COUNCIL (EFFICIENCY COUNCIL) IN RESPONSE TO THE PROPOSED "DECISION REGARDING CONTINUATION OF FUNDING FOR ENERGY EFFICIENCY PROGRAMS"

December 5, 2011

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

The California Energy Efficiency Industry Council (Efficiency Council) respectfully submits these comments on ALJ Farrar's Proposed "Decision Regarding Continuation of Funding for Energy Efficiency Programs" (Proposed Decision or PD), dated November 15, 2011. 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.efficiciencycouncil.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 use procurement funds to backfill the electric PGC funding for energy efficiency to ensure the 2010-2012 program portfolios continue as authorized and expected. We urge the Commission to adopt the PD as soon as possible at its December 15, 2011 business meeting to avoid any possible further delays and losses of valuable energy efficiency savings. 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 electric PGC expires, in order to ensure a smooth transition and continued energy efficiency savings into 2012.
b) The Efficiency Council strongly supports continuing EE funding at current authorized levels for the 2010-2012 program cycle to continue generating energy and cost savings benefits for customers, job creation, and ability of the state to meet its energy and climate goals. We appreciate the PD's acknowledgement and incorporation of Efficiency Council's support of the ACR proposal.
c) The Efficiency Council strongly supports the Commission's views in the PD that it has authority to direct collection of funds through PEEBA to support priority investments in energy efficiency, and we support its finding that its proposal is not inconsistent with legislative actions.
d) The Efficiency Council urges the Commission in the final decision to indicate its longer-term, broader authority to choose to direct the continued collection and use of utility procurement funds for cost-effective energy efficiency portfolios that it deems appropriate in the future.

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 electric PGC expires, in order to ensure a smooth transition and continued energy efficiency savings into 2012.

The Efficiency Council urges the Commission to adopt the PD at its business meeting on December 15, 2011. Adopting the PD before the electric Public Goods Charge (PGC) expires on January 1, 2012 would allow the utilities to collect the remaining funding necessary to ensure continued energy efficiency programs at the currently authorized levels through the 2010-2012 cycle. This will enable a smooth transition for energy efficiency programs into 2012, even in the absence of the PGC. Any delay in funding would disrupt the energy efficiency programs underway and put at risk the considerable benefits to customers and the state.

b) The Efficiency Council strongly supports continuing EE funding at current authorized levels for the 2010-2012 program cycle to continue generating energy and cost savings benefits for customers, job creation, and ability of the state to meet its energy and climate goals. We appreciate the PD's acknowledgement and incorporation of Efficiency Council's support of the ACR proposal.

As the PD acknowledges (p. 10), the Efficiency Council strongly supports the proposal to replace the electric PGC funding, which currently provides only about a quarter of the 2010-2012 efficiency portfolios, with Procurement Energy Efficiency Balancing Account (PEEBA) funds at the currently authorized levels on the basis of usage. The adoption of the PD will enable full funding of authorized energy efficiency programs in the 2010-2012 portfolios to continue, ensuring that residential and business customers continue to save energy and reduce their bills, the state makes progress towards its energy and climate goals, and jobs continue to grow from both the direct and indirect effects of energy savings. The replacement of funds will, as the PD indicates, avoid a funding situation that would "likely disrupt programs, harm customers, lead to job loss, and have serious adverse impacts on the environment" (p. 5).

c) The Efficiency Council strongly supports the Commission's views in the PD that it has authority to direct collection of funds through PEEBA to support priority investments in energy efficiency, and we support its finding that its proposal is not inconsistent with legislative actions.

In the discussion of legal authority, the PD states that "the Commission has ample authority to ensure that there are sufficient funds to support its previously approved programs" (p. 9). The PD notes NRDC's assertion, "the Constitution and Legislature have delegated broad authority to the Commission, the Commission has clear power to fix rates, establish rules…and prescribe a uniform system of accounts for all public utilities subject to its jurisdiction, and the Commission is required to prioritize energy efficiency in funding the mix of energy resources" (p. 7). The Efficiency Council supports this view, encapsulated in Conclusion of Law 1, regarding the Commission's authority to direct collection of funds for energy efficiency as the state's first priority resource in the loading order.

The PD also finds that the collection of funds through PEEBA is not inconsistent with any legislative intent (p. 8) as CFC and CLECA argued in their comments, especially considering that, as noted by NRDC, "failure of the Legislature to pass a particular bill cannot be relied upon as legislative intent" (p. 8). We support this finding and citation in the PD's Conclusion of Law 2, as well.

d) The Efficiency Council urges the Commission in the final decision to indicate its longer-term, broader authority to choose to direct the continued collection and use of utility procurement funds for cost-effective energy efficiency portfolios that it deems appropriate in the future.

The Efficiency Council notes that the PD is limited to specific dollar-for-dollar backfilling of the PGC funding for only 2012 to ensure continuation of funding for "already approved programs" in the 2010-2012 program cycle (p. 9). We support this recommendation to focus immediately replacing the lost PGC funds for the remaining year of the current energy efficiency portfolios.

However, the PD's very specific language that limits its direction to the utilities to collect funds for only the 2010-2012 portfolios (e.g., Conclusion of Law 5, p. 15 and Ordering Paragraph 3, p. 16) seems to leave uncertain the broader finding regarding whether sufficient procurement funds can be collected to fund electric energy efficiency activities in future portfolios authorized by the Commission. This is important because, while we understand the Commission has not yet authorized energy efficiency programs and specific funding levels for the post-2012 period, the marketplace would still significantly benefit from a signal of commitment from the Commission that it intends to make available sufficient funds for continued cost-effective energy efficiency beyond 2012. Such a commitment is essential for long-term stability and market confidence in the Commission's dedication to energy efficiency and the wide variety of benefits it creates for customers and the state.

As a result, we urge the Commission to add specific language in the final decision that recognizes its overall, longer-term authority over collection of procurement funds for energy efficiency. We suggest the following new Finding of Fact on p. 15:

> The Legislature has conferred broad authority to the Commission with a requirement for the Commission to prioritize and fund energy efficiency, including through the collection and use of procurement funds to sufficiently fund cost-effective energy efficiency portfolios that the Commission deems appropriate.

To support this additional Finding of Fact, we also recommend that the Commission indicate in the final decision in the Discussion section, p. 5, that although the decision does not impede or influence the IOU's upcoming general rate cases or funding for energy efficiency in 2013 and beyond, the Commission is nevertheless committed to ensuring sufficient funding, through this proceeding or other proceedings, to support its obligation to prioritize and fund cost-effective energy efficiency.

We also recommend the Commission revise Conclusion of Law 5 to indicate that while the collection and use of PEEBA funds for energy efficiency portfolios post-2012 is not being considered in this decision, nothing in the PD should be construed as prejudging the Commission's authority to continue this particular funding source in the future. We suggest the following edits of Conclusion of Law 5 on p. 15:

> Nothing in today's decision should be construed as ~~allowing a portion of the PEEBA to be used to backfill PGC program beyond the 2010-2012 cycle~~ <u>prejudging whether PEEBA funds should be collected or used to fund electric energy efficiency efforts in cost-effective portfolios beyond 2012, although the Commission maintains the authority to choose this funding source in the future to support energy efficiency programs.</u>

III. Conclusion

The Efficiency Council appreciates the opportunity to offer these comments on the PD that would direct the use of PEEBA to backfill efficiency funding that would have been collected in 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 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 continuity in the state's programs that support energy efficiency.

Dated: December 5, 2011

Respectfully submitted,

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