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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 ADMINISTRATIVE LAW JUDGE'S RULING REGARDING PROGRAM GUIDANCE FOR THE 2013-2014 ENERGY EFFICIENCY PORTFOLIO

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I. Introduction and Summary

The California Energy Efficiency Industry Council (Efficiency Council) respectfully submits these comments on Administrative Law Judge Farrar's "Ruling Regarding Program Guidance for the 2013-2014 Energy Efficiency Portfolio" (ALJ Ruling), dated December 7, 2011. These comments are submitted in accordance with Rules 1.9, 1.10, and 1.13 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 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 long-term

[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.

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

The Efficiency Council appreciates the Energy Division's effort to support planning for the Investor-owned Utilities' (IOUs) energy efficiency portfolios for the 2013-2014 transition period in order to achieve more market transformation and better long-term energy savings. However, the Energy Division, with this proposal, has moved to a role that is closer to portfolio administration rather than policy and regulatory guidance. No other state's commission that we are aware provides such a level of detailed guidance to administrators - utility, non-profit or governmental. Typically a framework of portfolio design criteria is provided and then administrators submit portfolios for approval. We are aware of the unhappiness that some have with utility administration, but we suggest reaffirming the Commission's role as providing effective guidance and oversight is more prudent than having regulatory staff provide specific requirements and program design.

Thus, while we appreciate the significant work the Energy Division has put into crafting the "Proposed Changes to Utility Energy Efficiency Portfolios for the 2013-2014 Transition Period," (2013-2014 Transition Proposal) the Efficiency Council urges the Commission to take a step back and focus on providing high-level policy guidance instead of the prescriptive details found in the proposal. Our comments are summarized as follows:

a) The Efficiency Council urges the Commission to focus on providing high-level policy guidance that will help drive appropriate programs consistent with its objectives, rather than prescribing detailed program design specifics as proposed by Energy Division that include, but are not limited to, specific incentive levels or program structures.
b) The Efficiency Council urges the Commission to streamline and minimize proposed guidance, as designing program portfolios through the proceeding comment process is an extremely cumbersome endeavor that the state and customers cannot afford to undertake at this time. To design a portfolio through this approach would be unnecessarily time-consuming and likely result in additional delays, even as the schedule for final Commission approval of the 2013-2014 transition period portfolio already seems difficult to meet.
c) The Efficiency Council urges the Commission to reconcile its goal for increased innovation in the portfolio with the unnecessary specificity in the Energy Division proposal. This level of prescriptive detail in the proposal constrains the market and stifles innovation.
d) If the Commission proceeds to direct detailed program modifications, the Efficiency Council requests clarification as to the extent of modifications it intends to direct. It is unclear whether proposed changes to the portfolios are limited to the five sectors/program

areas in the Energy Division proposal, or if additional significant modifications throughout the portfolios may also be intended.

II. Discussion

a) The Efficiency Council urges the Commission to focus on providing high-level policy guidance that will help drive appropriate programs consistent with its objectives, rather than prescribing detailed program design specifics as proposed by Energy Division that include, but are not limited to, specific incentive levels or program structures.

The Efficiency Council urges the Commission to focus its efforts on providing broad policy guidance and objectives for the 2013-2014 transition period portfolio. The Efficiency Council recognizes that the 2013-2014 transition period provides an opportunity for improvements to the portfolio, but this should not be at the expense of market continuity and stability. Particularly given the lateness in the schedule at this time, the 2013-2014 transition period should be primarily an extension of the current cycle with limited modifications to allow a smooth transition of customer savings into 2013 and an on-time start for all implementers. In addition to minimizing market disruptions, this would allow the Commission and all stakeholders to focus instead on developing timely and sound policy guidance for more significant changes anticipated for the post-2014 program cycle, such as the specifics of implementing rolling cycles or evergreening programs that can be rolled out without further delays on January 1, 2015.

We appreciate the hard work of Energy Division (ED) in crafting detailed proposals for modifications in five sectors in its 2013-2014 Transition Proposal. However, the Efficiency Council strongly suggests that rather using valuable ED and stakeholder time and resources to craft and respond to detailed program design proposals, the Commission should aim to extend the current program cycle with limited consensus adjustments that can be achieved within the already aggressive proposed schedule detailed in Commissioner Ferron's October 25, 2011 Assigned Commissioner's Ruling (ACR), which outlines final Commission approval of the 2013-2014 transition period proposal by August 2012. More significant changes should be left to be determined in time for the next full portfolio cycle starting in 2015.

The Commission must recognize that there are significant internal conflicts between the objectives of ED's proposed modifications to the 2013-2014 transitional portfolio and the existing energy efficiency policy structure and guidance provided by the Commission. Several policy drivers run counter to the outcomes desired in the ED proposal. Many of the Commission's desired market transforming shifts expressed in the ACR and in the Energy Efficiency Strategic Plan are aimed at delivering long-term savings, not countable in the immediate cycle, or may not deliver countable savings at all. Rather than trying to itself design programs and prescribe specific programmatic details to achieve the longer term objectives of deeper savings and market transformation, the Commission would be better focused on modifying its guiding policies for energy efficiency, which will encourage the portfolio administrators and program implementers to move programs in the desired direction. By aligning its policy structure guiding the energy efficiency portfolios with its desired objectives, the Commission can thus provide the appropriate guidance for implementers with expertise in the field to develop suitable programs.

Thus, the Commission must ensure that its energy efficiency policy rules and guidance are appropriately modified to motivate development of the desired types of programs and activities. These elements of the efficiency policy framework, which are the Commission's responsibility to set and subsequently serve to guide the composition of programs within the portfolios, include:

- updates to energy savings goals;
- establishing the EM&V framework and ex ante data sets;
- determining and allowing methodologies for counting savings from water-energy and behavioral programs;
- updates and modifications to the cost-effectiveness methodology to ensure that broader objectives like market transformation and comprehensiveness are valued;
- details of the program cycle structure, such as rolling cycles and evergreening programs;
- and resolving the risk-reward incentive mechanism.

However, we stress that at this point, there is not adequate time in the planning schedule for the Commission to address all of these fundamental issues for implementation in the 2013-2014 period while still ensuring market continuity moving into 2013 and minimizing disruptions to customers and implementers. Only the first two issues in this list, along with straight-forward updates to cost-effectiveness inputs and other high-level programmatic guidance, can and should be addressed immediately by the Commission. We support the Commission addressing the other more substantive issues in the planning stages for the next full portfolio cycle to start in 2015.

b) **The Efficiency Council urges the Commission to streamline and minimize proposed guidance, as designing program portfolios through the proceeding process is an extremely cumbersome endeavor that the state and customers cannot afford to undertake at this time. To design a portfolio through this approach would be unnecessarily time-consuming and likely result in additional delays, even as the schedule for final Commission approval of the 2013-2014 transition period portfolio already seems difficult to meet.**

The Efficiency Council is concerned with ensuring an on-time start for programs of all implementers during both the 2013-2014 transition period and the post-transition period to ensure a continued stream of savings to customers and continued economic growth exhibited by the energy efficiency industry in California. The compressed timeframe at this point to address remaining planning issues for the transition period has already made it difficult for parties to effectively evaluate, collaborate, and respond to requests for comment. Detailed program proposals such as the ED 2013-2014 Transition Proposal are particularly difficult for stakeholders to respond in detail. In addition, the ALJ Ruling requesting comment on the ED 2013-2014 Transition Proposal is an additional step in the schedule that was not included in the October 25 ACR's already extremely aggressive and later-than-preferred schedule and will certainly push the overall schedule back even further. We also understand that additional rulings requesting comment on additional programmatic guidance are also expected in the next month. Given these new additions to the schedule, final Commission approval of the 2013-2014 programs will not be possible by August, and perhaps not possible even before the end of the 2012. The Commission must recognize the constraints of its planning schedule for the 2013-2014 portfolio and ensure that the planning and preparation schedule remains on-track.

The proposed schedule from the October 25 ACR is both ambitious and already less than ideal, as final CPUC adoption of the 2013-2014 transition period portfolio should occur at a *minimum* of six months prior to the start of the portfolio to allow for non-utility implementer contracting details to be finalized and for ramp-up of programs. The October 25 ACR expressed a desire for increased participation of third parties and local governments, but delayed Commission approvals of each new round of programs in a portfolio hamstring the ability of these non-utility implementers to be effective if they are unable to start program implementation on time. Even as a six-month lead-time seems improbable at this point for 2013-2014, our member company implementers have reported that some types of custom programs realistically need up to 18 months of preparation and lead-time with customers to ensure a successful program.

The timing of final approval of 2013-2014 portfolios continues to be of particular concern, especially now as the proposed schedule established in the October 25 ACR has already been delayed. At this rate, it is already clear that a Proposed Decision on programmatic guidance, originally proposed to be released in late December 2011, and a final decision in January 2012, will not be possible. In addition, the scale and amount of detail of the changes outlined in the ED 2013-2014 Transition Proposal is alarming; it is unclear how much of the current portfolio is proposed to be modified, but the ED proposal seems to represent substantial modifications from the current portfolio that will require additional time to implement and cause disruptions in program implementation, especially if these changes are debated through the proceeding commenting process. Detailing and debating program changes through the formal proceeding comment process is excessively burdensome and would be better approached through an informal process, overseen by the portfolio administrators but guided by appropriate high-level policy direction from the Commission, that allows input from implementer and non-implementer stakeholders alike. The overall delays that seem imminent in the 2013-2014 planning schedule will jeopardize customer savings and disrupt the market. Any additional delays and substantial changes to the portfolio will make it difficult for program administrators and implementers to implement the portfolio extension without significant interruptions in implementation and customer offerings.

Given the significant time constraints and the shared concern of various stakeholders about the need to prevent stop-starts in portfolio and program implementation, the CPUC should focus on providing swift high-level policy guidance and objectives to guide appropriate program improvements and implementation; detailed program design is best left to program implementers with decades of experience in the field. The portfolio administrators and program implementers, with the appropriate high-level policy guidance, have the specific expertise to develop the most effective programs in an appropriate timeframe for both the 2013-2014 transition period and subsequently for the post-transition period beginning in 2015.

c) **The Efficiency Council urges the Commission to reconcile its goal for increased innovation in the portfolio with the unnecessary specificity in the ED proposal. This level of prescriptive detail in the proposal constrains the market and stifles innovation.**

The Efficiency Council urges the Commission to stimulate technological, process, and programmatic innovation in the energy efficiency portfolios by focusing on providing broad policy guidance rather than diving into unnecessary specificity around program design, such as that suggested in the ED proposal. The amount of prescriptive detail provided in ED's 2013-2014 Transition Proposal is extremely concerning. The level of specificity for proposed changes constrains flexibility and ultimately hinders innovation and the ability to achieve cost-effective energy savings.[2]

The Commission has prioritized increased innovation in the portfolio in the *California Energy Efficiency Strategic Plan* and recognizes that innovation is necessary to achieve the ambitious long-term energy efficiency goals in California.[3] Innovation is fostered in an environment that is neutral in the selection of winners and losers and is free of unnecessary constraints. The Efficiency Council's member companies, and other implementers in the state, have substantial and long-standing expertise in California's energy efficiency industry and have on-the-ground experience with successfully delivering efficiency savings in the state through a variety of channels. Our members have made it clear that they are able to operate most effectively, serve the most customers, and produce the most savings when the Commission sets

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[2] Notable examples of unnecessary specificity in the ED proposal include:

- Allocations of statewide marketing budget (33%) towards specific program areas (p. A8)
- List of emerging technologies to incorporate in commercial programs (p. A13)
- Dollar amounts ($200) for rebate for the development of energy ratings (p. A33)

[3] California Public Utilities Commission, *California Energy Efficiency Strategic Plan: January 2011 Update*, http://www.cpuc.ca.gov/NR/rdonlyres/A54B59C2-D571-440D-9477-3363726F573A/0/CAEnergyEfficiencyStrategicPlan_Jan2011.pdf, p. 80.

the overall guiding policies, without prescriptive detailed constraints on the portfolio and its programs.

d) If the Commission proceeds to direct detailed program modifications, the Efficiency Council requests clarification as to the extent of modifications it intends to direct. It is unclear whether proposed changes to the portfolios are limited to the five sectors/program areas in the ED proposal, or if additional significant modifications throughout the portfolios may also be intended.

If the Commission proceeds to direct detailed program modifications, rather than providing high-level policy guidance through alignments of its efficiency policy framework with its desired objectives, the Efficiency Council requests clarification of the extent of the significant modifications it intends to direct. The ED proposal currently targets recommended modifications for only a specific set of five sectors/program areas (residential; commercial; lighting programs; codes and standards; and emerging technologies), while staying silent on other sectors/programs, such as the industrial sector or other efforts. It is unclear whether the Commission proposes to continue those unmentioned sector/program areas without modification, continue those program areas with modifications proposed at a later date, or discontinue them altogether. It is important that the Commission clarify the extent of modifications within the portfolio it may intend to direct. Although the extent of modifications is already alarming given the short amount of time left for planning for the 2013-2014 period – and an on-time start or continuation of programs into 2013 seems unlikely – additional modifications in other sectors/programs (if requested by the Commission) will certainly cause even further delays and disruptions to the market.

III. Conclusion

The Efficiency Council appreciates the opportunity to offer these comments on the proposed changes to the IOU energy efficiency portfolios for the 2013-2014 transition period. We urge the Commission to swiftly resolve the issues around the 2013-2014 transition period by providing high-level policy guidance to ensure uninterrupted program delivery and avoid spending valuable Commission resources and time on prescriptive details. Quickly addressing these issues now will provide sufficient time for the Commission and parties to address structural issues in planning for the next program cycle in order to maintain continued progress toward meeting the state's Strategic Plan and other energy policies. The Efficiency Council looks forward to working with the Energy Division, Commission and other stakeholders to ensure the on-time delivery of a robust and effective 2013-2014 energy efficiency portfolio.

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Respectfully submitted,

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