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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 2013-2014 ENERGY EFFICIENCY GOALS

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I. Introduction and Summary

The California Energy Efficiency Industry Council (Efficiency Council) respectfully submits these comments on ALJ Farrar's "Administrative Law Judge's Ruling Regarding 2013-2014 Energy Efficiency Goals" (ALJ Ruling), dated December 28, 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 economic growth, stable and reasonably priced energy infrastructures, and environmental improvement.

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

The ALJ Ruling presents Energy Division's (ED) proposal for 2013-2014 energy efficiency (EE) goals and requests comment. The Efficiency Council appreciates the hard work of ED and its consultants in preparing the 2011 potential study and 2013-2014 goals proposal along an accelerated timeframe. We recognize that in the effort to produce studies that would be able to be used in time for 2013-2014 planning, a complete potential study update and goals proposal were not possible for 2013-2014; we look forward to a more comprehensive potential and long-term goals update for future years, as we understand a full goals study extending through 2025 is targeting for completion this summer.

The Efficiency Council has not reviewed the full technical details behind the 2011 draft potential study upon which the ED goals proposal is based, and do not have specific comment on the specific numerical goals proposal. Thus, we are unable to respond to all of the specific questions listed in the ALJ Ruling. Instead, we offer the following high-level policy comments and important considerations the Commission must take into account as it further refines and adopts the 2013-2014 transition period goals; we provide a mapping of our comments to the questions posed by the ALJ Ruling at the end of these comments. Our comments are summarized as follows:

a) The Efficiency Council urges the Commission to continue to move quickly to establish the energy savings goals and other high-level policy guidance necessary to inform the 2013-2014 transition period and minimize delays in a smooth transition of customer savings into the 2013-2014 period.

b) The Efficiency Council generally supports the ED proposal's guiding principles, but emphasizes that the Commission must not consider the adoption of the 2013-2014 savings goals in isolation from other policy guidance that determines how performance against the goals is assessed.

c) The Efficiency Council generally supports the ED proposal to establish separate energy savings targets for codes and standards advocacy, IOU programs with existing technologies, and emerging technology programs to ensure an ongoing continuum of savings throughout the market. However, the Commission must still ensure that overall flexibility is allowed in the efficiency portfolios.

d) The Efficiency Council generally supports the ED proposal to establish goals on a gross basis, consistent with existing Commission policy, to encourage overall long-term savings across California's economy. However, the setting and assessment of goals for codes and standards raises important considerations that still need to be resolved to effectively encourage the continuation of the IOUs' codes and standards support activities.

e) Given the significant decrease in the proposed program goals from previous years, the Commission should carefully onsider the potential implications for the longer-term energy efficiency policy framework and future portfolio design and approaches, and the transition to future portfolios. However, there is not sufficient time in the schedule to pursue radical changes to be made in time for 2013 without drastically disrupting the efficiency industry and the flow of savings to customers.

II. Discussion

a) The Efficiency Council urges the Commission to continue to move quickly to establish the energy savings goals and other high-level policy guidance necessary to inform the 2013-2014 transition period and minimize delays in a smooth transition of customer savings into the 2013-2014 period.

The Efficiency Council is concerned with minimizing market disruptions and ensuring an on-time start for programs of all implementers during both the 2013-2014 transition period and the post-transition portfolio cycle to ensure a continued stream of savings to customers and continued economic growth exhibited by the energy efficiency industry in California. 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. The compressed timeframe at this point, wherein a final 2013-2014 Commission decision may not be available until the very end of 2012, 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.

We continue to emphasize that 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. We urge the Commission to adhere to an achievable schedule that will allow for an on-time start in 2013, rather than attempting to shoehorn too many activities than is practically achievable into the time period remaining, and again risk delays in the schedule and repeated catch-up efforts for future program cycles. Tackling an appropriate scale of issues for the time remaining will allow time – and party resources – to fully and adequately discuss issues on a timely basis, which will be necessary to prepare for an on-time start of the next full portfolio cycle beginning in 2015.

The setting of energy savings goals is an important and essential responsibility of the Commission, as it is the agency responsible for overseeing efficiency accomplishments in the investor-owned utilities' (IOU) territories in the state and establishing the associated energy efficiency policy framework to guide those savings. Goal-setting, as well as policy determining how performance will be assessed against those goals, is at the appropriate level of broad policy guidance and objectives the Commission should set for the 2013-2014 transition period portfolio. Thus, we appreciate the ED and their consultants' efforts to quickly compile the updated potential study and goals proposal that will be necessary to inform 2013-2014 transition period planning, in advance of a January 1, 2013 start date. We look forward to a more comprehensive potential and goals study extending out to 2025 that will hopefully be able to more adequately represent the potential in other sectors, such as industrial and agriculture, which was unable to be modeled fully in the 2011 potential study update.

b) The Efficiency Council generally supports the ED proposal's guiding principles, but emphasizes that the Commission must not consider the adoption of the 2013-2014 savings goals in isolation from other policy guidance that determines how performance against the goals is assessed.

The ED goals proposal states that its guiding principles, drawn from past Commission decisions, in developing its recommendations are that the goals "1) be aggressive yet achievable; 2) support long-term planning; 3) encourage a focus on long-term savings; and 4) be based on the best available data" (Attachment A, p. 1, footnotes removed). In describing the 2013-2014 energy savings goals the Commission will adopt, the ALJ Ruling states, "[t]he Commission will later evaluate whether the IOUs have met these goals, and use the actual savings derived from that evaluation to determine IOUs' goals in future portfolios" (p. 1).

The Efficiency Council supports these guiding principles for developing EE goals. However, we emphasize the Commission cannot develop and adopt the 2013-2014 EE goals in isolation of the other policy guidance related to how performance against these goals will be assessed. There are many factors that affect the achievability of the EE goals that will be adopted, as well as how programs within the EE portfolios will be designed with the intention of meeting the goals, and these factors must be taken into account during the adoption of the goals. The complete "rules of the game" must be established and laid out in advance of program design in order to most effectively drive the market transformation and long-term savings the Commission hopes to encourage.

For example, the risk-reward incentive mechanism (RRIM) – and how the adopted goals are integrated into the RRIM – is a key factor for how the IOU portfolio administrators' performance will be evaluated, and what kinds of programs they will be motivated to pursue. These motivations are then translated into requirements by the IOUs that are passed down to other program implementers within the portfolios to steer and manage the performance of the overall portfolios. Although the Efficiency Council recognizes that RRIM reforms are being considered in a separate proceeding, for which a new Order Instituting Rulemaking will be considered for adoption by the Commission at its January 12, 2012 business meeting, these two proceedings must be closely coordinated. In addition, it is paramount that the goals and how performance is measured against the goals are aligned on an apples-to-apples basis, with the same types of savings incorporated in each.

Thus, other factors that must be considered alongside the adoption of the goals are:

1. Risk-reward incentive mechanism design;
2. Assurance of apples-to-apples alignment of the goals with how performance will be measured against the goals;
3. Clarification of what savings can be "counted" toward the goals, including:
    - the definition of emerging technologies (ET), if a separate ET category of goals is established, and what qualifies as an ET versus existing technology;
    - behavioral savings; and
    - water-energy nexus savings;
4. Further definition of and/or clarification of how declining savings will be calculated and cumulative goals assessed, including which vintage of savings assumptions will be used in each.

All of these factors in the policy framework surrounding the EE goals will affect how the goals are interpreted and pursued, and thus will also have large ramifications on the composition of the programs within the EE portfolios.

c) The Efficiency Council generally supports the ED proposal to establish separate energy savings targets for codes and standards advocacy, IOU programs with existing technologies, and emerging technology programs to ensure an ongoing continuum of savings throughout the market. However, the Commission must still ensure that overall flexibility is allowed in the efficiency portfolios.

The Efficiency Council generally supports the ED proposal to establish separate energy savings goals for codes and standards advocacy, IOU programs with existing technologies, and emerging technology programs. This framework acknowledges the important ongoing continuum of savings in the marketplace that is essential to continued energy savings into the future –the development of new technologies; programs to encourage the wider adoption of those technologies once they are better established; and finally incorporation into codes and standards of those technologies once they are cost-effective. By separating out the goals for each component of this market continuum, the Commission can ensure that each of these important efforts continues to be pursued and does not detract from the others. All three components are important and cost-effective parts of a comprehensive, integrated portfolio of energy efficiency strategies necessary to meet ambitious long-term statewide goals for energy savings. However, the Commission must keep in mind that further dividing of the energy savings goals beyond these three areas is not advisable. Allowing flexibility in the overall efficiency portfolio, while still ensuring that it is cost-effective overall, is essential; the marketplace must be able to respond to changing market conditions and capture new savings opportunities and areas of high potential as they arise.

d) The Efficiency Council generally supports the ED proposal to establish goals on a gross basis, consistent with existing Commission policy, to encourage overall long-term savings across California's economy. However, the setting and assessment of goals for codes and standards raises important considerations that still need to be resolved to effectively encourage the continuation of the IOUs' codes and standards support activities.

The Efficiency Council generally supports the ED proposal to establish EE goals on a gross basis, without need for detailed attribution. We support the Commission's previous directive in D.08-07-047 to employ gross goals to encourage wider cooperation among the various efforts to maximize long-term energy efficiency throughout the state. The past few years have shown that an intense focus on attempting to determine precise values for attribution of savings have contributed to an acrimonious relationship among various parties that have detracted from overall efforts to further energy efficiency. Thus, we believe a focus instead on gross savings is most appropriate to maximize energy savings, provide the most economic, environmental and system benefits for customers, and further expand the energy efficiency industry that has helped develop these savings and provided a bright spot in the state's stagnant economy.

However, the issue of gross savings for codes and standards (C&S) is a more complicated topic, as gross and net savings for codes and standards are calculated differently than other efficiency programs since the concept of freeridership does not come into play for C&S. The IOUs have traditionally played an important role in developing, supporting, and furthering California's codes and standards through their C&S advocacy, compliance, and reach code programs, and further continued cooperation and coordination with the California Energy Commission and other parties is necessary to maximize and optimize long-term energy savings. As California's *Long-Term Energy Efficiency Strategic Plan* states:

> "There is no policy tool more essential for the widespread and persistent transformation of energy performance in California than energy codes and standards. … More than most other efficiency policy areas, codes and standards demand coordination with other efforts and parties – from regulators to the regulated – to be optimal. Both the Energy Commission and the IOUs have played a major role in coordination, and must be committed to playing an even larger role in the future to support and/or facilitate future efforts."[2]

There are many factors responsible for the ultimate adoption of codes and standards, of which the IOUs' C&S support activities is just one area – including compliance and reach code support, and not just C&S adoption advocacy as the ALJ Ruling and ED proposal seem to possibly imply. The ALJ Ruling and ED proposal repeatedly refer to the proposed C&S goals as "codes and standards advocacy." The ED Proposal states, "The new C&S model calculates the

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[2] CPUC, *California Energy Efficiency Strategic Plan, January 2011 Update*, Section 7, pp. 62-63. http://www.cpuc.ca.gov/NR/rdonlyres/A54B59C2-D571-440D-9477-3363726F573A/0/CAEnergyEfficiencyStrategicPlan_Jan2011.pdf.

credit IOUs can claim from all their advocacy efforts, including those that lead to direct code adoption." (Attachment A, p. 8) However, our understanding of the 2011 potential study update (as discussed on the January 11, 2012 DAWG teleconference), upon which ED's goals proposal is based, is that the proposed C&S goals are gross values that do not account for any crediting or attribution. There is much confusion around the C&S goals and what they represent and mean, so we urge the Commission to clarify these issues.

If gross C&S goals are established, it is unclear how the IOUs' net performance (and that of the other implementers within the IOUs' portfolios) – after accounting for "naturally occurring" savings and study-assessed attribution of savings – can be reasonably assessed against those gross goals in a fair manner that effectively encourages them to continue to pursue C&S support activities and also does not penalize the IOUs for various factors completely outside the control of their C&S advocacy and other support efforts. The Efficiency Council does not have a specific recommendation for how C&S goals should be established and IOU performance assessed, but simply raises this issue to request greater clarity around the C&S goals and encourage discussion with other parties in the hope that consensus can be reached.

e) Given the significant decrease in the proposed program goals from previous years, the Commission should carefully consider the potential implications for the longer-term energy efficiency policy framework and future portfolio design and approaches, and the transition to future portfolios. However, there is not sufficient time in the schedule to pursue radical changes to be made in time for 2013 without drastically disrupting the efficiency industry and the flow of savings to customers.

The ALJ Ruling states, "when excluding codes and standards advocacy savings, the goals components associated with utility programs would decrease relative to current goals statewide by 42% for electricity savings and by 49% for natural gas savings." (p. 4) These decreases in savings goals, approaching 50%, are quite sizable. Though the Efficiency Council has not reviewed the numerical analysis behind the updated 2011 potential study, and do not take a position on the potential study, our understanding from ED and consultants at the January 11, 2012 DAWG teleconference is that these decreases in goals are primarily due to the significant downward adjustment in savings assumptions due to the 2006-2008 evaluations. In any case, such a dramatic decrease in goals may signal that California may be reaching a limit to what savings can be accomplished with existing voluntary program efforts. Thus, there may be significant implications for the current efficiency policy framework and the composition of future portfolios and program approaches to capture energy savings.

As the Efficiency Council has stressed before, as California moves up the energy efficiency supply curve to meet energy and AB 32 goals, after already pursuing efficiency for several decades, there is a growing potential for conflict between these state goals and the definition of cost-effectiveness. This conflict could make it more difficult to implement energy efficiency improvements that are still considered cost-effective under existing definitions. The Commission must be committed to reviewing the efficiency cost-effectiveness tests and assumptions, and must also recognize the constraints of the current cost-effectiveness calculations, which, left unchanged, will not allow for the successful attainment of California's long-term energy efficiency goals.

Since portfolios and programs should be designed to meet a given set of goals, this points to another reason why the energy savings goals cannot be set in isolation of other policy guidance, including the current ED proposal for 2013-2014 programmatic guidance. If the goals are significantly decreased from prior years, the question is raised as to how the Commission will oversee the transition to meeting the proposed reduced program goals. Although longer-term shifts in the efficiency portfolio may be warranted , the Efficiency Council emphasizes that there is not sufficient time in the schedule to allow for drastic changes to be made for 2013-2014.

The Efficiency Council urges the Commission to ensure that a disastrous boom-bust experience does not result from implementing these 2013-2014 goals. California's aggressive energy efficiency policies have encouraged the flourishing growth of the energy efficiency industry, and an established efficiency infrastructure in the state has already been developed. Particularly as California needs to move up the energy efficiency supply curve, established expertise will be required to reach the deeper, more comprehensive savings. Not only do repeated disruptive program starts and stops – as well as large changes in portfolio program offerings – cause confusion and indecision by customers, they are also not conducive to a strong, effective, or sustainable clean energy economy

III. Mapping of Efficiency Council Comments to ALJ Ruling Questions

The ALJ Ruling requests comments on a specific list of questions (p. 5-6) and requests that "Parties that do not have a response to a question should identify the question and state 'no comment.'" (Footnote 3, p. 5) As the Efficiency Council's comments are not organized specifically according to this list of questions, we provide the below mapping of our comments to the list of questions in the ALJ Ruling.

A. In general, is Staff's proposal reasonable, feasible, and appropriate with regard to establishing 2013-14 EE goals?

See section IIb and IIe for details about some concerns.

B. Are Staff's proposed guiding principles for the 2013-14 EE goals proposal reasonable? Why or why not?

See section IIb.

C. Is each of the following components of the Staff proposal reasonable? Please explain why or why not for each situation:

1) Use of the 2011 potential study and codes and standards advocacy savings estimates as the basis for goals;

No comment, though see section IId for comments and concerns about the codes and standards goals.

2) Separate targets for codes and standards advocacy, IOU programs with existing technologies, and emerging technologies programs;

See section IIc.

3) Goals applied on a gross basis per current policy; and

See section IId.

4) Annual and cumulative goals, with cumulative goals including recovery of savings lost from decay of past EE activities, but not recovery of unmet goals prior to 2010.

No comment, though see section IIb for some discussion of cumulative goals.

D. Is Staff's proposal to set annual goals based on 100% of market potential reasonable? If you disagree with the staff proposal, indicate why not, and what is a reasonable and appropriate percentage for electricity (GWh), peak (MW), and natural gas (MMTh) savings potential from utility programs in the EE goals? Staff proposes to establish separate targets for savings from codes and standards advocacy and IOU programs. If you do not agree with this proposal, what *do you suggest the Commission do regarding assumptions about achievable market potential? If you do not agree that the Commission should provide any such protection, please explain.*

No comment, though see IIe for broader implications of proposed goals.

E. Are the specific numerical values in Table 4 (Staff-proposed draft numerical goals) of Attachment A reasonable? If not, what values should be used instead?

No comment.

F. Is it feasible and appropriate for the IOUs to file (with their 2013-14 portfolio applications) calculated values for declining savings in their portfolios for purposes of calculating cumulative goals, as proposed by Staff?

No comment, though see section IIb for brief discussion of cumulative goals calculations.

G. What comments, if any, do parties have in response to Navigant's Addendum to the 2011 Potential Study (Attachment B), in regards to (a) the inputs, (b) the codes and standards model documentation, and (c) the outputs?

No comment, though see section IId for comments and concerns about the codes and standards goals.

H. Does Staff's proposal appropriately interpret previous Commission decisions, in particular with regards to codes and standards advocacy? Do the expected codes and standards advocacy savings modeled in Navigant's addendum (Attachment B) depart from current policy or from extant interpretation of current policy?

No comment, though see section IId for comments and concerns about the codes and standards goals.

I. Attachment B assumes an initial code compliance rate of 85% for Title 20 appliance standards and 83% for Title 24 building codes. Is this reasonable? If not, what alternative values would parties' propose?

No comment.

IV. Conclusion

The Efficiency Council appreciates the opportunity to offer these comments on ED's proposal for 2013-2014 energy efficiency goals. We urge the Commission to move quickly to swiftly resolve the policy guidance issues around the 2013-2014 transition period by providing high-level policy guidance, including the goals, to ensure uninterrupted program delivery and allow adequate focus to develop further and timely policy guidance and structural issues for the next program cycle. 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.

Dated: January 12, 2012

Respectfully submitted,

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