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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 PROVIDING GUIDANCE ON 2013-2014 ENERGY EFFICIENCY PORTFOLIOS AND 2012 MARKETING, EDUCATION, AND OUTREACH

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I. Introduction and Summary

The California Energy Efficiency Industry Council (Efficiency Council) respectfully submits these comments on ALJ Farrar's proposed "Decision Providing Guidance on 2013-2014 Energy Efficiency Portfolios and 2012 Marketing, Education, and Outreach" (PD), dated March 20, 2012. These comments are submitted in accordance with Rules 1.9, 1.10, and 1.13 of the California Public Utilities Commission's (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 65, employ thousands of 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.efficiciencycouncil.org.

The PD provides the Commission's proposed guidance for the development of the invest-owned utilities (IOUs) 2013-2014 transition portfolio and requests comment on the proposal. The Efficiency Council enthusiastically supports a number of elements of the PD. For example:

- We support the Commission's desire to guide the development of an improved transition portfolio to pave the way for more fundamental shifts in the next three-year cycle that will unlock new levels of energy efficiency.
- We support Codes and Standards and associated programs as they are among the most cost-effective approaches for delivering significant energy savings and advancing market transformation. Thus, the Council supports having the IOUs continue their leadership role in developing codes and standards proposals.
- We support the PD's call for a more integrated and dynamic approach between IOU programs.
- We support the development of a Planning and Coordination subprogram to better facilitate coordination with Emerging Technologies and incentive programs to advance the market towards improved codes and standards changes.
- We support all efforts to put guidance in place as soon as possible in order to not delay the start of the 2013-2014 transition portfolio; delays result in lost savings, lost California jobs and lost benefits for California consumers.

While the Efficiency Council appreciates the significant work of the Commission in preparing the proposed guidance for the 2013-2014 transition portfolio, we are concerned that as it is presented, the Commission in this PD has not adequately taken advantage of its unique and important role in providing high-level policy direction to ensure that the energy efficiency policy structure is put in place and consistently integrated. The Commission must ensure that any portfolio in the 2013-2014 period not be subject to schedule delays or added administrative burdens in order to avoid significant interruptions for participating customers, erosion of substantive energy savings, and potentially harmful disruptions to the energy efficiency industry workforce.

Thus, perhaps rather than directing many prescriptive details for any portfolio cycle, including the 2013-2014 transition period, the Efficiency Council believes that the Commission must assert its demonstrated leadership role and be the responsible entity to determine high-level policy direction for the future of energy efficiency in our state. Many entities can provide suggestions on the details of the portfolio, which can be assessed and coordinated by portfolio administrators in the context of, and to be aligned with, overall policy guidance set by the Commission. However, only the Commission is appropriately situated – and therefore must be the entity responsible – to provide the necessary leadership to pull together the big picture and ensure that the efficiency policy framework is appropriately integrated to ensure success.

An area that requires leadership and clarity of purpose involves the evolution of the measure portfolio and the impact on costs. As energy efficiency has been acquired over the past two decades we are moving from the installation of easy, extremely cost-effective measures to more complex measures embedded in more complex operating environments. This is the reality of moving up the supply curve of cost effective measures to acquire more savings. Future savings are more expensive than past savings. This reality about the energy efficiency supply curve is often lost behind a misperception that energy efficiency should evolve to become a commodity-based solution where the more we buy the cheaper it must become. While this can be true for some emerging technologies, the Commission should provide clear understanding and resulting direction that the environment we are moving into is more complex, often requiring customized solutions tailored to individual consumer needs, and in many cases is more expensive with more decisions and actors involved than in the past.

The Efficiency Council offers the following high-level policy comments and important considerations that we respectfully request that the Commission take into account as it further refines its guidance for the 2013-2014 transition portfolio and beyond. Our comments are summarized as follows:

1. Deep Retrofits: The Efficiency Council commends the Commission for endeavoring to transition the IOUs' energy efficiency portfolios away from individual measures with relatively short design lives to more comprehensive "suites" of measures that deliver deeper, longer-lasting savings. We support improved integration and whole-building approaches, but the Commission must first explicitly define "deep retrofit" and recognize the time needed to identify, market and implement such deep retrofits. From the experience of our members, deep retrofits, particularly outside the residential market, often require customized solutions. Significant barriers remain to achieving high levels of cost-effectiveness when implementing deep retrofits.
2. Portfolio Management: The Efficiency Council supports the Commission's efforts to encourage the most effective portfolio possible, but we are concerned that the level of detailed management and oversight asked of the Energy Division (ED) staff will have the undesired effect of delays and added transaction costs which will result in discouraging

consumer participation in the various programs and placing unreasonable expectations on a high-achieving, but already heavily burdened Energy Division.

3. Third-party Programs: The Efficiency Council supports the Commission's continued understanding of and support for third-party programs. We thus urge the Commission to promote an expedited timeframe for approval of successful third-party programs to ensure that these programs are "evergreened," thus continuing uninterrupted into the transition period. Further, the Efficiency Council recommends alternative approaches for the definitional criteria and solicitation processes affecting new third-party programs and prospective customers during the transition period.
4. Custom Project Review Process: The Efficiency Council recognizes that deep retrofits can require customized solutions for commercial, industrial, agricultural and public sector projects and thus we urge the Commission to consider modifications to the existing custom project review process to balance the priorities of ensuring that pending projects are not subject to unnecessary delays in meeting customer needs and still receive the appropriate level of outside review envisaged by the Commission. As many deep retrofits are in effect custom projects, we believe that the efficacy of the custom project process is critical to meeting the Commission's deep retrofit goals.
5. Number and Complexity of Programs: The Efficiency Council urges the Commission to reconcile their commitment to expansion and innovation in the portfolio with their direction to reduce the number and complexity of programs in the 2013-2014 portfolio.
6. Timing and complexity: In order to not delay implementation of the 2013-14 portfolio or over burden it with too many regulatory/administrative/implementation changes we suggest the Commission separate its ambitious Proposed Decision into two components: a much smaller one for deployment in the transition period which sets the stage for the next cycle, and one that seeks to create more efficient and scalable solutions for consideration in 2015 and beyond.

II. Discussion

1. Deep Retrofits

The Efficiency Council commends the Commission for endeavoring to transition the IOUs' energy efficiency portfolios away from individual measures with relatively short design lives to more comprehensive "suites" of measures that employ a "systems approach" to deliver deeper, longer-lasting savings. Achieving deep savings is an important priority for the 2013-2014 transition period since many policymakers and industry experts believe that the levels of energy efficiency savings that are potentially available are not being achieved fast enough. The Efficiency Council agrees whole-heartedly with this perspective. There are a number of sources that corroborate the notion that savings are not being achieving at the expected levels. For example, a recent ACEEE paper cites several reasons for California's deep retrofit savings shortfall including the public's lack of appreciation of the full range of benefits, depressed economic situation, substantial cost of such improvements, inadequate financing options, high contractor overhead costs and other requirements, and complexities of program regulation.[2]

While the PD clearly indicates that "deep retrofits" are a policy priority, the Efficiency Council has concerns in three areas. First, achieving "deep retrofits" typically adds to the cost of delivering energy efficiency programs. These measures often are more expensive to implement and require greater levels of implementation support (e.g., engineering, etc.). In the residential sector in particular, comprehensive upgrades typically require multiple site visits – including initial assessments/audits, multiple contractor installations, post-installation testing – each of which poses an added burden to the participating customer. This model alone can serve as a barrier to program participation for Energy Upgrade California. At the same time, there is no assurance that the resulting savings will be significantly higher than for measures with shorter lifetimes. With higher implementation costs for comparable savings, the program cost-effectiveness may naturally fall as we work our way further up the energy efficiency measure supply curve. In terms of the ultimate goals and long term strategic plan, this situation should be expected, thus, the Efficiency Council urges the Commission to recognize this reality and accept transition portfolio program plans that may in fact show lower overall cost-effectiveness relative to previous portfolios. Going forward better methods of customer engagement and intervention need to be developed to enable more cost effective scaling up of overall energy efficiency acquisition.

The second area of concern relates to a perception that the California energy efficiency industry is not doing enough to encourage "deep retrofits." More than half of the members of the Efficiency Council operate third-party programs, including programs that target measures that have long lifetimes and deliver savings that would fall into the "deep retrofit" category. For example, a number of third-party programs operated by our members target customized measures for commercial and industrial facilities. Oftentimes, these measures focus on HVAC and motor end-use loads. Measure lifetimes tend to vary, and average around 15 years. We urge

[2] Knight, Robert, "Deep Energy Savings in California Homes: A New Vision," April 2012. Draft paper to be presented at the 2012 ACEEE Summer Study on Efficiency in Buildings conference, Asilomar, California.

the Commission to acknowledge a need for targeted niche third party programs that focus on specific end use customers/needs.

In order for California's energy efficiency industry to effectively reach the goal of achieving "deep retrofits", the Commission should provide a clear and quantitative definition of what it means to achieve "deep retrofits". To facilitate this, the Efficiency Council requests that the Commission use the 2013-2014 transition period to establish a stakeholder group that would (1) fully define the concept of "deep retrofits", (2) develop the methodologies for how to calculate and measure savings associated with "deep retrofits", (3) reevaluate cost-effectiveness thresholds for such "deep retrofits", and (4) provide recommendations on a pathway to implement these new "deep retrofit" methods in the least intrusive and most effective way possible.

The third area of concern relates to less focus being given to the concept of lost opportunities. To the extent that there are temporary or even longer term cessation of programs that cause the installation of such long lived measures such as HVAC and motors, all installations of non-efficient measures that occur in the absence of the program that could otherwise have been efficient represent lost opportunities that are essentially unrecoverable for 15 years, or more. Consideration of lost opportunities should be central to any policy or procedural decision that might result in temporary program gaps

2. Portfolio Management

The Efficiency Council believes the PD represents a major recasting of the Commission's function as a body providing portfolio oversight and broad policy direction to one in which it takes the leadership role in portfolio development and management. As proposed, the Commission is inserted into nearly every operational system and process in a way that could represent a de facto replacement of IOU administration of EE portfolios; one example being the new role of the ED with respect to overseeing local government programs. While this approach could arguably be considered a possible option within the alternate administration context in future program cycles, it is one that cannot be accomplished during the 2013-2014 transition period. The Commission's proposed shifts in administration roles circumvent the collaborative stakeholder process that would be needed, again, if the Commission were to develop alternative administration scenarios that may be used in 2015 and beyond. It also raises market uncertainty, as occurred in previous efforts associated with proposed administrative changes, that can jeopardize attainment of 2013-2014 savings goals and related legislative and policy objectives.

The portfolio development process requires certainty in savings calculations methodologies, sufficient time to change existing support systems, and time to translate those values into a cost-effective portfolio design. The scope of the operational and technical changes, overly-aggressive timelines, and a host of additional workload this PD proposes for IOUs, third parties, local governments and the ED will hinder effective portfolio design, create market uncertainty, hamper program delivery and strand potential savings. In particular, we are concerned that the vast amount of additional work and responsibility that this PD imposes on the ED is unrealistic considering the number of available ED staff and the ED's regulatory versus market mechanisms structure; as well as the limited availability of consultant resources to fill the gap given the conflict of interest requirements. We urge the Commission to postpone until the 2015 portfolio cycle many of the unclear and labor-intensive requirements that currently stand to diminish energy savings and portfolio effectiveness. Alternatively, we suggest that the Commission review the misalignment of regulatory objectives and models that are perhaps hindering progress and compelling the Commission to dive ever deeper into the administration and implementation process. The Commission should work with stakeholders during the transition period to better identify, define and remedy the underlying issues that are leading to these complex combined regulatory/administrative solutions, which we fear will ultimately be un-scalable and present increasing barriers to consumer participation and statewide efficiency goals achievement.

As evidence to support our concerns about the level and detail of the ED workload, below is a partial list of new, additional workload that this PD would place on the ED staff during the transition period:

- Serve as a joint contract manager with the utilities regarding local government programs.
- Review all IOU and 3rd Party work paper submissions for 2013-2014 and ongoing.
- Improve "parallel" *ex ante* review of custom projects to eliminate backlog.
- Develop "risk sharing" definition, criteria and thresholds for use in establishing *ex ante* values for new measures.

- Conduct NTG (net of free ridership) screenings as part of its *ex ante* project reviews process.
- Develop guidelines for HVAC interactive effects application to existing savings calculators and methodologies and vet functionality of updated tools and methodologies.
- Evaluate whether custom measures' HVAC interactive effects would be significant or not.
- Adjust Codes & Standards goals for attribution and realization of verified savings.
- Consult with CEC in the establishment of a California general service LED standard.
- Develop and deploy two complete DEER updates.
- Regularly release detailed information on updates to measures, methods, and assumptions.
- Develop a clear procedure for applying DEER updates to relevant non-DEER work papers while retaining flexibility.
- Adhere to new work paper approval and dispute resolution process without creating backlogs.
- Use *ex ante* review process to establish guidelines on how to evaluate and weigh different types of evidence for the determination of early retirement versus the alternatives.
- Develop guidelines for the evaluation of remaining useful life evidence for the replacement of the DEER default values for specific projects and technologies.
- Develop recommendations on: (1) whether it is appropriate to replace the regulation, code, or standard baseline with a typical installation baseline for use in calculating energy savings; (2) under what circumstances and based upon what kind of evidence such a change could be made; (3) if the change to a typical installation baseline is made, how the baseline parameters should be established for use in setting *ex ante* values; and (4) if this change is made what are the time and budget implications for both Commission Staff and utilities for both *ex ante* and ex post savings development.

- Work with the parties to develop viable "evergreening" proposals for possible implementation in the post-2014 period.
- Consider changes to the portfolio evaluation plan and execution of evaluation.
- Evaluate dual baseline methodologies and tools submitted by IOUs and implementers.
- Integrate Market Transformation Indicators (MTI) and Market Effects and Dual Baselines into CPUC tracking systems.

The above list, partial as it is, cannot reasonably be expected to be accomplished during the 2013-2014 transition period. Taking data support infrastructures as a single example, IOUs, implementers and LPGs are expected to change their internal systems in order to incorporate Dual Baselines, MTIs and other components outlined in the PD, all of which have significant costs, significant lead times for development and deployment and are not figured into current budgets and workloads. Again, many of the points the PD seeks to incorporate are worthy; there are just simply not the resources or time available to do so for more than a handful of them between now and the end of 2014. For these reasons, we respectfully ask the Commission to reevaluate its ambitious Proposed Decision and separate it into two components: a much smaller one for deployment in the transition period which sets the stage for the next cycle, and one that seeks to create more efficient and scalable solutions for consideration in 2015 and beyond.

3. Third-Party Programs

As stated above, many members of the Efficiency Council currently operate third-party programs in California. The Efficiency Council applauds the Commission's recognition of the importance of third-party programs and the "performance-based" attributes of these programs. Indeed, California's ratepayers clearly benefit from the risk mitigation afforded by the third-party program delivery approach in that third-party providers are positioned to take on more risk than the IOUs and have experience/expertise specific to the varied project opportunities, and barriers, associated with delivering efficiency to the full range of California's diverse energy users. Third-party providers can do this since they tend to be exceptionally nimble and therefore are able to deliver strategic, deep, performance-driven energy savings. Nevertheless, third-party providers like any business require a high degree of certainty in the rules that govern their programs.

The PD directs the IOUs to continue successful third-party programs and to eliminate those that are not performing well.[3] Further, the PD prohibits the IOUs from issuing new competitive solicitations for third-party programs at this time.[4] The Efficiency Council's comments on the subject of third-party programs covers two areas: the renewal of existing programs and the process and timing for new solicitations.

3.1. Renewal of Existing Programs

For existing third-party programs, the Efficiency Council urges the Commission to adopt a program renewal schedule that ensures there will be no disruptions for these programs going into the transition period. It is important to recognize that any delays in the renewal of successful programs will create major uncertainties for the energy efficiency providers. Most providers are small businesses who live and die by the cash flow generated by their work efforts on these programs. In addition, uncertainty and delays decrease vendor/trade ally and customer confidence in the programs and investments in efficiency upgrades decline. The impact goes well beyond Efficiency Council members to the employees of vendors who supply and install measures.

Without a predictable timeframe for the program renewal, many of these businesses will be forced to undertake painful layoffs of their workforces. Furthermore, the uncertainty caused by program delays will potentially force many of these companies to pursue business opportunities in other states leading to a "brain drain" of energy efficiency professionals in our state.

The Efficiency Council appreciates the Commission's direction to the IOUs that they explain how they will ensure a timely start for the third-party program renewals.[5] To ensure that "timely" means no disruption in program delivery, the Efficiency Council proposes the following detailed strawman proposal for third-party program renewals:

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[3] PD, at p. 22.
[4] Id.
[5] PD, at p. 152.

- Following approval of this Decision, all IOUs immediately work together, with input from the Efficiency Council, third-party providers, and other interested stakeholders, to identify consistent criteria that define successful third-party programs. The definition of "success" should follow a broad set of principles that center on cost-effectiveness, achieved savings, participant satisfaction, and market potential. Criteria defined and finalized by 5/31/12.
- IOUs file consistent criteria in portfolio applications by 7/2/12.
- Successful third-party providers work with IOU program managers to define savings goals and budgets for the 2013-2014 transition period. Third-party PIPs to be submitted with IOU portfolio applications by 7/2/12.
- IOUs work with successful third-party providers to finalize contractual terms and conditions. Contingent contract renewals finalized by IOUs and third-party providers by 10/1/12.
- Contracts finalized once Commission approves portfolio applications (around November/December 2012).[6]
- Successful third-party programs continue to operate without disruption from 1/1/13 through 12/31/14.

3.2. Process and Timing for New Solicitations

Regarding the solicitation process for new third-party programs during the 2013-2014 transition period, the Efficiency Council agrees with the PD's conclusion that the process could benefit by some level of reform, with better targeting, oversight, and execution. However, the Efficiency Council is concerned that final Commission approval of such a process for the 2013-2014 transition period, combined with the time needed to implement the solicitation process once approved will mean that no new third-party programs would be up and running before at least the middle of 2013. As a result, this would only allow for an 18-month implementation cycle, which may not be a sufficient amount of time to ensure the success of the new programs. As a result,

[6] Note that if the portfolio applications are not approved by the end of 2012, then this proposal could not be implemented. A two-month window has been specified to ensure that the process for renewing existing third-party programs is completed well in advance of third-party contract expirations.

the Efficiency Council is concerned that there will be a shortage of quality and innovative programs bid into the process, and programs that are fielded will once again be driven by the short performance timeline to adopt short-term strategies that will hinder acquiring deeper savings.

To potentially alleviate this problem, the Efficiency Council proposes that these new third-party programs be considered part of the "rolling" cycle concept espoused in the Assigned Commissioner's Ruling and Scoping Memo Regarding 2013-2014 Bridge Portfolio and Post-Bridge Planning, Phase IV dated 10/25/11 (ACR).[7] These programs would fall into the "evergreen" category, and thus not be subject to the requirement that IOUs file a new application for these programs at the beginning of the next EE program cycle in 2015. To ensure that only successful "evergreen" programs would move forward for the next program cycle starting in 2015, the IOUs could utilize the same success criteria defined above for continuing existing programs during the 2013-2014 transition period. These criteria would only apply to the new third-party programs solicited and selected as part of this process. As preparations begin for the 2015 program cycle, solicitations could be issued for new third-party programs during each year in that cycle to replace retiring programs from the 2013-2014 transition period. These new programs could be operated for a 3-4 year timeframe, thus creating a continuous cycle of new third-party energy efficiency programs.

Regarding the specifications of the third-party solicitation process, the Efficiency Council appreciates the opportunity to offer the following recommendations. First, it is very important that no opportunities or capabilities be left outside of the process. To the extent that prospective bidders are interested in offering alternatives to existing IOU programs, these opportunities should be encouraged. Indeed, such program ideas might lead to innovative delivery approaches that could result in greater levels of savings and lower costs to deliver those savings. The Efficiency Council encourages an open, transparent and continuous approach for soliciting new third-party programs. This could be accomplished through a statewide RFP process facilitated by all of the IOUs. The RFP would be drafted jointly by the IOUs and vetted through a stakeholder process. Bidders would be required to specify the IOU service territory for which

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[7] ACR, at p. 3.

their program would apply. Contract negotiations would ultimately be subject to terms and conditions specified by each individual IOU.

Second, the Efficiency Council recommends that an open, transparent and continuous process be adopted for third-party program bid evaluation and selection. While criteria applied in previous program cycles could be used as a starting point, it is widely known that selection criteria from previous program cycles varied from one IOU to the other. To eliminate inconsistencies, the IOUs should create one set of evaluation and selection criteria for all third-party solicitations across the state. Those criteria would also be vetted and finalized vis-à-vis the same stakeholder process as described above.

Third, the new solicitation process might adhere to a schedule roughly consisting of the following milestones:

- Establish statewide third-party solicitation stakeholder process by 9/3/12
- Convene regular stakeholder meetings between 9/3/12 and 12/31/12 with the explicit objective of completing a statewide third-party RFP
- Launch third-party RFP by 1/2/13, with bids due 2/1/13
- Select winning bidders by 4/1/13
- Individual IOUs complete contract negotiations by 6/1/13
- New third-party programs launched 7/1/13
- Successful new third-party programs “evergreened” beyond 12/31/14

4. Custom Project Review Process

The Efficiency Council urges the Commission to consider immediate modifications to the existing Custom Project Review (CPR) process to balance the priorities of ensuring that pending projects are not subject to unnecessary delays and still receive the appropriate level of outside review envisaged by the Commission. As the CPR process is in the early stages of implementation, several third-party implementers have reported that they are experiencing customer backlash and potential drop-offs in their program participation rates.

For illustration, one of our members reported on an experience they recently had for a customized project addressing laboratory fume hoods and HVAC optimization technologies for a high tech manufacturing facility. The same technology was already implemented at similar non-residential institutional facilities and was reviewed and approved by the utility and their outside independent engineers. Thus, the proposed custom measures were not new or untested. Copious amounts of trend data were provided as part of the application process used to vet and verify the estimated energy savings associated with the measures. Prior to project approval, the ED selected the project for additional review. They communicated that the review would be limited to approximately two weeks. However, by the time the ED completed their independent review more than two months' time had elapsed. Meanwhile, equipment, customer staff, and contract labor were unable to proceed with the project. Due to customer staff and tenant schedules and activities, time was of the essence for project completion. These challenges were communicated directly to the ED reviewers but ultimately were not taken into consideration. Since sufficient data on the current and past projects of this type were made available to ED and the customer was willing to make their staff and facility available for site visits, the ED review process should have been relatively simple. The delay caused months of unrealized energy savings and negative impacts on tenants and the willingness of the customer to engage the program with similar projects in the future. This is a direct example of how long and uncertain reviews/delays cause unnecessary reductions in energy savings, unfortunate negative customer perceptions, and thus, reduced customer participation especially with advanced and comprehensive projects.

The CPR process, as it is currently structured, has the potential to set back meaningful progress towards achieving deep retrofit savings associated with customized projects by placing unnecessary burdens, increased financial risk and unwarranted delays onto customers by duplicating existing and effective program administrative activities.

There are several aspects of the CPR process that are of particular concern to many third-party implementers:

- The process is unnecessary for third-party program implementers who are already subject to the types of independent review steps that the Commission is intending through the existing process.
- The process imposes arbitrary discounts to estimated savings that do not comport with industry standards and best practices.
- The process creates regulatory uncertainties due to delays in reviews leading to erosion of customer participation rates.

Each aspect is further articulated below. Finally, we offer a proposed path of resolution to these concerns.

4.1. Necessity of Custom Review Process

The existing CPR process imposes an additional layer of review in the pre-approval cycle for a project that implements custom measures. The Efficiency Council believes that that this added layer of review is unnecessary since all custom projects implemented by third-party providers are already subject to an extensive and independent outside review process. Custom measures, by their very nature, are site specific and the savings analysis is dependent on the knowledge of specific processes and systems at customer facilities. Because of these added layers of complexity, the IOU program designers have established a multi-step review process, which involves the customer, the third-party program implementer, the proposed equipment installer, an independent third-party engineering reviewer (retained by the IOU), and an internal IOU engineering reviewer. These processes are imposed by the IOUs on all third-party providers. The addition of the ED review to all providers (third-parties and IOUs) of customized programs has resulted in a substantial slow down in an already arduous process. Most importantly, it does not seem possible to have custom reviews occur "in parallel" to the IOU reviews, if the ED has the final say on the *ex ante* values. If as indicated, there will be no additional data requirements to be imposed on customers and program implementers, it is difficult to see how, using the same data points as the other parties, the ED's evaluation would produce significantly different results that would justify the costs and time delays that are certain to ensue with the addition of another review entity to an existing multi-party review process.

Finally, the Efficiency Council is concerned as to whether there can be a sufficient number of qualified personnel resources available to conduct hundreds of custom project reviews each year.

4.2. Arbitrary Discounts Applied to Estimated Savings

As we discussed above, the Efficiency Council believes that the ED, given its personnel and budget constraints, even with the best of intentions and their demonstrated commitment to the efficiency programs, will only likely be able to conduct a small number of CPRs in a timely manner. The ED's requirement to either review custom projects or apply a default Gross Realization Rate backs customers into a corner, leaving them with the difficult decision of either delaying their projects to fit the review timeline, which is not possible for many large commercial and industrial customers, or accepting the blanket 80% Gross Realization Rate for their projects, regardless of the findings of the existing review process paid for via the program in which they are participating.

We believe that structuring the program in this way amounts to imposing a *de facto* discount of 20% on project savings, which will affect the decision of customers to go forward with their projects and will negatively impact the cost effectiveness of Custom Projects. This *de facto* 20% discount was not supported by the record in the Commission case where the CPR process was ordered in D.11-07-030.[8] The evidence on which the discount is based is controversial and the discount's application appears arbitrary; the controversy has not been fully vetted and resolved as is appropriate for a factor that will have a major impact on programs.

In particular, this 20% discount on essentially the entire EE custom program portfolio will directly affect the ability of implementers to deliver deep retrofits that by their nature already have long paybacks, and will now be pre-judged to have 25% longer paybacks.

4.3. Regulatory Uncertainty and Participant Erosion

The Efficiency Council believes that over the last few years the Commission has worked to establish regulatory certainty for EE programs because regulatory certainty is a pre-requisite if California is to reach its aggressive energy efficiency goals. Program cycles have been extended (and bridged when necessary) to ensure program continuity and the EM&V process has been professionalized and refined.

Imposing the CPR process, however, appears to run counter to this longstanding Commission effort by imposing a new level of uncertainty on some of the largest projects in the program portfolio. There is no time limit for the ED to conduct CPRs. There is an aspirational goal that the ED review will run concurrent with the IOU review, but there is no consequence if the ED cannot meet this timetable.

Customer confidence in third-party implementers and the programs they manage as well as the program structures and timelines lead to greater customer engagement and commitment. If customers start to see delays due to added review processes, with no firm timeframe for approval, they are likely to reduce their commitments or disengage from programs totally. Additionally, if savings values from cutting edge technologies are discounted arbitrarily or

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[8] http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/139858.htm

measures are not proposed for fear of extensive reviews and delays this will also lead to reduced customer engagement – and reduced numbers of deep retrofits. Third-party providers already go through processes of due diligence reviews by other third- parties in addition to the IOU's reviews. Customers are educated on the rebate and incentive application process and are therefore aware of the steps and timelines associated with them. Added steps and schedule delays will again reduce customer engagement or at the very least hinder implementers' ability to influence customers to develop comprehensive projects and achieve deep energy savings utilizing emerging technologies and best practices.

4.4. Proposed Alternative Process

The Efficiency Council proposes the following revisions to the CPR process:

- Exempt third-party implementers from the ED's CPR process if independent review processes are already established between the IOU and the third-party implementer.
- Eliminate the Gross Realization Rate for custom projects implemented by third-parties. Because of the extensive independent engineering reviews conducted prior to a custom project being approved, 100% of the ex-ante savings estimates are reasonable.
- In cases where the ED conducts a CPR, require that the ED reviewers complete their reviews within 10 business days of initiation of the review. If ED fails to meet the schedule, then the initial *ex ante* savings estimates will prevail.

5. Number and Complexity of Programs

The Efficiency Council appreciates the Commission's goal that energy efficiency programs should be reduced in number and simplified to the extent practical. While the reduction and simplification goal is worthy of consideration, the Efficiency Council believes that such a directive potentially runs counter to other goals in the PD, namely the expansion of government programs/partnerships and third-party programs. Because many of these programs target niche markets and end-uses, there has to be a large number of these programs to properly achieve the deep, and by their nature custom, retrofits. In addition, the reduction and simplification goal may require a significant amount of effort for IOUs to redesign the programs in their portfolios and thus runs the risk of defeating the purpose of having a "transition" funding cycle that enables time for fundamental changes to be made to the overall EE program portfolio. For example, folding statewide HVAC and new construction programs into other statewide programs may need fundamental changes in the policies, processes, incentive structures, and marketing of the current statewide programs. Finally, the Efficiency Council firmly believes that fulfilling a goal that reduces the number and complexity of energy efficiency programs runs the risk that innovations in EE program design and delivery will be stifled, which runs counter to the "deep retrofit" goals.

To remedy these inconsistencies, the Efficiency Council recommends that third-party programs be exempted from the discussion about reducing the number of programs. To ensure innovation and the achievement of "deep savings", there is clearly a role for targeted niche programs. These are the types of programs that could be carried out by third-party providers. The Efficiency Council believes that through this approach the Commission would be encouraging such innovation rather than stifling it by arbitrarily reducing or limiting the number of programs.

6. Timing and Complexity

As has been suggested throughout these comments, the PD is extensive and complex. The Efficiency Council worries that much of the detail and complexity may result in delays implementing the 2013-2014 program portfolio and thus lead to an erosion of potential energy savings during this period. In order to not delay implementation of the 2013-2014 transition portfolio or over burden it with too many regulatory/administrative/implementation changes, the Efficiency Council proposes that the Commission separate its ambitious PD into two components: a much smaller one for deployment in the transition period which sets the stage for the next cycle, and one that seeks to create more efficient and scalable solutions for consideration in 2015 and beyond.

The first component would focus on the important guidance that IOUs require to meet the application filing date set for 7/2/12. The guidance would focus on addressing key aspects of the PD that would bring about an uninterrupted portfolio of energy efficiency programs beginning on 1/1/13. Examples of areas to include in this first component would include specification of savings goals, cost-effectiveness criteria, EM&V issues, and program design guidance. The second component would focus on the various pilot proposals and investigations needed in order to pave the way for a smooth transition to the 2015 program portfolio. Examples would include various EM&V processes, financing and local government programs, emerging technologies, number and complexity of programs, and statewide marketing and outreach efforts.

III. Conclusion

The Efficiency Council appreciates the opportunity to offer these comments on proposed decision for 2013-2014 transition portfolio guidance. We continue to urge the Commission to focus on providing high-level policy guidance. Only by moving quickly on this resolution will the Commission be able to ensure the uninterrupted delivery of energy efficiency programs to California's energy users. 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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