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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's own motion to determine the impact on public benefits associated with the expiration of ratepayer charges pursuant to Public Utilities Code Section 399.8.	Rulemaking 11-10-003 (Filed October 6, 2011)

COMMENTS OF THE CALIFORNIA ENERGY EFFICIENCY INDUSTRY COUNCIL (EFFICIENCY COUNCIL) IN RESPONSE TO THE PHASE 2 PROPOSED DECISION ESTABLISHING PURPOSES AND GOVERNANCE FOR ELECTRIC PROGRAM INVESTMENT CHARGE AND ESTABLISHING FUNDING COLLECTIONS FOR 2013-2020

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Steven Schiller
Board Chair
California Energy Efficiency Industry Council
436 14th Street, Suite 1020
Oakland, CA 94612
(916) 390-6413
sschiller@efficiencycouncil.org

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I. Introduction and Summary

The California Energy Efficiency Industry Council (Efficiency Council) respectfully submits these comments in response to Administrative Law Judge Fitch's "Phase 2 Decision Establishing Purposes and Governance for Electric Program Investment Charge and Establishing Funding Collections for 2013-2020" (PD), dated April 24, 2012. 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 nearly 70, employ over 4,000 Californians throughout the state. They include energy service companies, engineering and architecture firms, contractors, implementation and evaluation experts, financing experts, workforce training entities, and manufacturers of energy efficiency products and equipment. The Efficiency Council's mission is to support appropriate energy efficiency policies, programs, and technologies that create sustainable jobs and foster

[1] More information about the Efficiency Council, including information about the organization's current membership, Board of Directors, and antitrust guidelines and code of ethics for its members, can be found at www.efficiciencycouncil.org. The views expressed by the Efficiency Council are not necessarily those of its individual members.

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

Overall, the Efficiency Council supports the PD's recommendations and appreciates the Commission's significant attention in addressing the comments we submitted in response to the ACR/ALJ Ruling and Energy Division Staff Proposal on March 7, 2012. We urge the Commission to continue to move quickly to implement the EPIC program to ensure continued momentum of the state's energy RD&D.

The Efficiency Council offers the following comments and important considerations the Commission should take into account as it finalizes the guidance for the EPIC program. Our comments are summarized as follows:

a) The Efficiency Council generally supports the proposed investment plan process and schedule. We also recommend that the Commission provide guidance that allows the IOUs and CEC to offer contract extensions into the next investment period for later phases of multi-phase RD&D projects that continue to meet the investment plan criteria. In addition, we recommend the Commission provide guidance to ensure an efficient procurement process.

b) The Efficiency Council recommends that the PD's metrics for an investment plan's success recognize overall success in an RD&D area and recognize that individual project failures are normal and acceptable part of cutting-edge research.

c) The Efficiency Council supports the PD's guiding principles and view that all types of energy efficiency innovations should be eligible for funding but recommends that the Commission specifically acknowledge the eligibility of codes and standards related activity in order for it not to be excluded in the future, given its importance in current efficiency goals setting proceedings. The ED Staff Proposal called out the importance of Codes and Standards activities, which meet the guiding principles established in the PD, and its eligibility should be made explicit.

d) The Efficiency Council supports the PD's view that the administrators need flexibility to shift funds and make adjustments as necessary but we recommend a higher numerical level of flexibility than the PD allows.

e) The Efficiency Council recommends that the PD specifically support the leveraging of regional, national, and multinational collaboration for RD&D projects. We believe that such collaboration is essential for effective RD&D and is consistent with the primary guiding principle of creating ratepayer benefits.

II. Discussion

a. The Efficiency Council generally supports the proposed investment plan process and schedule. We also recommend that the Commission provide guidance that allows the IOUs and CEC to offer contract extensions into the next investment period for RD&D projects that meet the investment plan criteria and provide guidance to ensure an efficient overall procurement process.

The Efficiency Council generally supports the PD's schedule and plan for investment and implementation, including its recommendation to allow the administrators to propose RD&D priorities. We also appreciate the Commission's recognition, in establishing a plan and funding source through 2020, that market-transforming innovations and developments are only possible with long-term and sustained support for RD&D. Although the three-year investment planning cycles allow a longer-term time horizon for RD&D projects, there may be cases where the projects need to be continued into the next investment period.

Innovation often requires a sustained effort, as it is often not something that is likely to be achieved in a single project. The PD's emphasis on competitive procurement could possibly push the IOUs and CEC towards a project-by-project approach and against sustained efforts in the situations were progress indicates it is justified. Therefore, we recommend that the Commission provide guidance in the PD that allows the IOUs and CEC to:

- Offer contract extensions into the next investment period for projects and programs that meet the funding eligibility criteria established by the administrator for that investment period.
- Make non-competitive awards for the later phases of multi-phase projects and programs. Such follow-on awards could be contingent on documented good progress in earlier phases (the PIER program is currently authorized to make non-competitive awards to multi-phase projects based on successful performance in earlier phases - PRC 25620.5(f)(4)).

While the PD recognizes that "there may be limited and unique circumstances where it is not possible or desirable" to do competitive bidding (p. 35), the Efficiency Council recommends that the Commission specifically note that contract extensions for successful projects and research programs that require further work may be such an example. We believe that it is not possible to identify all such awards in advance as implied on page 35 of the PD. We also note that San Diego Gas and Electric (SDG&E) has clarified its position on this subject in its reply comments: "Again, SDG&E's criticism was not leveled at the policy of sole source procurement – it recognizes that there are cases in which sole source procurement is the only sensible option – but rather at the lack of transparency in making those judgments."[2] We agree with this need for sole source procurement in some situations, as well as the need for transparency. Therefore, we would suggest that the PD text on page 35 be modified to indicate that:

"In each investment plan, the administrators may propose to use non-competitive awards, for example for successful project and program contract extensions, as long as the proposed budget for non-competitive awards is limited and the criteria and procedures for such awards, including extensions, are stated in the investment plan."

We also note that based on feedback received over many years, that the Commission could also provide a general recommendation in Section 6, Program Governance and Process, that the CEC and IOUs work to improve procurement efficiency and efficacy and have a continuous improvement process in place with respect to the overall procurement processes that recognize the differences between procuring products with exacting specifications and enabling effective research.

b. The Efficiency Council recommends that the metrics for an investment plan's success recognize overall success in an RD&D area and acknowledge that individual project failures are normal and acceptable part of cutting-edge research.

The Efficiency Council is generally supportive of the PD's metrics by which the administrators' investment plans are judged. However, we encourage the Commission to ensure

[2] SDG&E March 16 Reply Comments (p. 4), http://docs.cpuc.ca.gov/efile/CM/161963.pdf.

that the administrators' evaluation metrics recognize that individual project failures are normal and an acceptable aspect of cutting-edge research. The PD should recommend that administrators' RD&D programs include methodology to evaluate the overall benefits of their RD&D, recognizing that there may not be benefits for every project. As a result, we recommend that the Commission revise the first line of Order 12 (c) as follows: "Metrics against which the <u>overall</u> investment plan's success should be judged, including at least the following…" (p. 86).

c. The Efficiency Council supports the PD's guiding principles and view that all types of energy efficiency innovations should be eligible for funding but recommends that the Commission specifically acknowledge the eligibility of codes and standards activity in order for it not to be excluded in the future.

In our comments on the ACR/ALJ Ruling and ED Staff Proposal, the Efficiency Council strongly supported the Staff Proposal's inclusion of "support [for] research and development to enable energy efficiency improvements, including support for future building and appliance efficiency standards" (Staff Proposal p. 16) as one of the recommended activities for the proposed EPIC program. The Staff Proposal had noted that codes and standards were a past PIER research area that had saved ratepayers hundreds of millions of dollars (Staff Proposal p. 19). While the PD also notes the Staff Proposal's recommendation (PD p. 32), it does not mention codes and standards activities going forward under the EPIC. It also shortens the Staff Proposal's suggested language that includes codes and standards as an example in one of the metrics of success, "Adoption of technology, strategy, and research data by others including utility rebate programs, codes and standards, and other entities.." such that it does not mention it (or other examples) (PD p. 24, p. 87).

Although we support the Commission's desire not to be "too precise at this stage with defining potential funding areas because of the risk that we will unintentionally exclude a worthy investment area" (p. 34), we think it is worth mentioning that support for future building and appliance efficiency standards would be an eligible activity due to its electricity sector and ratepayer benefits. The PD could include this under the non-technology elements that the PD added based on the Efficiency Council's earlier comments in this proceeding.

We recommend the PD's Findings of Fact no. 13 (p. 77) be augmented to, "Applied research and development should include activities that address environmental and public health impacts of electricity-related activities, support appliance and building standards, as well as clean transportation with a linkage to electricity sector ratepayer benefits."

d. **The Efficiency Council supports the PD's view that the administrators need flexibility to shift funds and make adjustments as necessary but we recommend a higher level of flexibility than the PD allows.**

In our comments on the ACR/ALJ Ruling and Staff Proposal, which proposed allowing the administrators to shift 10% of the budget of any funded programmatic area to another funded area, the Efficiency Council indicated that we thought this percentage was too limiting (Efficiency Council p. 8). The Commission expresses agreement in the PD's discussion of this issue in saying, "we believe it is necessary to allow the administrators some flexibility…" and "this type of fund-shifting flexibility is given to utilities routinely within their energy efficiency portfolios…" (p. 62). The conclusion in the PD, however, limits the fund shifting even further to only 5% of the budget except with Commission review and approval (p. 63). We still believe that a higher percentage, on the order of 10-20%, of shifting between any area during an investment plan cycle is advisable given the changing nature of the energy marketplace and the inherent need to have RD&D respond to changes and lessons learned during each phase of funded projects. While working toward a long-term research plan is important, locking in budgets when new information could be used to shift funds could result in inefficient use of rate-payers funds, and as the PD states, could result in "regulatory delay while a Commission proceeding is completed, even for relatively small changes" (p. 63).

We urge the Commission to allow for more flexibility in shifting funds than the PD indicates. This would require minor numerical changes to Findings of Fact #31 (p. 79), Conclusions of Law #18 (p. 82), and Order #13 (88).

e. **The Efficiency Council recommends that the PD specifically support the leveraging of regional, national, and multinational collaboration for RD&D projects. We believe that such collaboration is essential for effective RD&D and is consistent with EPIC's primary guiding principle of creating electricity ratepayer benefits as well as its subordinate principles.**

We suggest that the Commission acknowledge in the PD that leveraging California ratepayer dollars though collaboration with regional, national, and multinational efforts is an effective way to maximize investments in not only research but in future investments in energy-related enterprises in California. Such collaboration ensures that businesses around the globe see California as a continuing leader in innovative energy solutions and it leverages investments by public and private entities throughout North America and beyond to maximize the impact of EPIC funding. In addition to the primary guiding principle of creating direct ratepayer benefits, it supports the additional guiding principles in Findings of Fact #2 (p. 75), such as societal benefits, GHG emissions reductions in the electricity sector at the lowest possible cost, the loading order, low-emission vehicles and transportation, safe, reliable, and affordable energy savings, economic development, and efficient use of ratepayer monies. EPIC funds are nevertheless primarily directed at creating ratepayer benefits even when projects involve collaboration and therefore such support is consistent with the EPIC program's primary guiding principle. As a result, we recommend that this point be acknowledged in the discussion in Section 6, Program Governance and Process, and an additional Finding of Fact be inserted following Finding of Fact #15 stating, "Activities that include collaboration with and leverage of closely related RD&D projects should be eligible for EPIC funding.

f. Conclusion

The Efficiency Council appreciates the opportunity to offer these comments on the EPIC Phase 2 PD. The Efficiency Council is highly supportive of an RD&D program that includes energy efficiency in order to meet the state's aggressive energy and climate goals, as well as ensure savings for consumers and creation of jobs and economic benefits. We urge the Commission to continue to move quickly to implement the EPIC program to ensure that the state's energy RD&D momentum is not lost. The Efficiency Council looks forward to working with the Commission and other stakeholders to ensure continuity in public RD&D and other state programs that support energy efficiency.

Dated: May 14, 2012

Respectfully submitted,

Steven R. Schiller
Board Chair
California Energy Efficiency Industry Council
436 14th Street, Suite 1020
Oakland, CA 94612
(916) 390-6413
sschiller@efficiencycouncil.org