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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 Polices, Programs, Evaluation, Measurement, and Verification, and Related Issues.	R. 09-11-014 (November 20, 2009)

REPLY COMMENTS OF THE NATURAL RESOURCES DEFENSE COUNCIL (NRDC) ON THE PROPOSED DECISION AND ALTERNATE PROPOSED DECISION REGARDING PUBLIC PURPOSE PROGRAM FUNDS

September 27, 2011

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I. Introduction

Pursuant to Rules 1.9, 1.10, and 14.3 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure, the Natural Resources Defense Council (NRDC) respectfully submits this reply to party opening comments on the proposed "Decision Regarding Public Purpose Program Funds" (PD) and the alternate proposed "Decision Regarding Public Purpose Program Funds" (APD) dated September 2, 2011.[1] NRDC is a non-profit membership organization with over 250,000 members and online activists in California and a longstanding interest in minimizing the societal costs of the reliable energy services that Californians demand. We support parties' rationale for urging the Commission to vote for the APD, as it not only ensures efficiency remains top priority resource for California, but also ensures minimal disruption to the efficiency industry and the workers they employ. Our comments are summarized as follows:

- NRDC agrees with the majority of parties who urge the Commission to adopt the APD in order to support a growing efficiency industry, maintain momentum towards the state's climate goals, and continue to value efficiency as the state's priority resource.

[1] NRDC replies to the City and County of San Francisco (CCSF), the Division of Ratepayer Advocates (DRA), the Energy Efficiency Industry Council (Efficiency Council), the Joint investor owned utilities (IOUs), Local Government Sustainable Energy Coalition (LGSEC), and the Marin Energy Authority (MEA).

- NRDC maintains that neither the Commission nor any party has identified any legal prohibition to using electric funds for gas efficiency programs and supports doing so to respond to this unique circumstance.
- NRDC agrees with DRA that additional financing options should be explored, but urges the discussion to be made within the proper context of determining the details of the extension year.

II. Discussion

1. NRDC agrees with the majority of parties who urge the Commission to adopt the APD in order to support a growing efficiency industry, maintain momentum towards the state's climate goals, and continue to value efficiency as the state's priority resource.

NRDC supports the majority of parties who urged the Commission to adopt the APD in their opening comments. (Efficiency Council, p.3, LGSEC p.1, CCSF, p. 2, Joint IOUs, p.1) In particular, The LGSEC and CCSF both note that the APD better supports the direction of local government programs as outlined in the California Energy Efficiency Strategic Plan. (LGSEC, p.1 & CCSF, p.1) The Efficiency Council supports the APD to "limit curtailment of natural gas programs and limit losses to the state's efficiency program momentum, efficiency industry, customer savings, and progress toward aggressive energy and climate goals." (p.3) NRDC further supports the opening comments of the Efficiency Council and CCSF who cite additional flexibility allowed by the APD to ensure the continuation of natural gas efficiency programs. (Efficiency Council, pp.1,7 & CCSF p.1)

The energy efficiency industry thrives, and customers reap the benefit of greater energy savings, when the Commission provides clear and stable policy direction. This is an instance when the Commission must provide a clear signal that efficiency is the state's top priority and policies are being made to support the growth of the efficiency industry and workforce as well as to ensure momentum continues towards achieving our ambitious climate goals. The decision to support the APD would do just that, and we reiterate our agreement with and support for the majority of parties who urge the Commission to vote for the alternate.

2. NRDC maintains that neither the Commission nor any party has identified any legal prohibition to using electric funds for gas efficiency programs and supports doing so to respond to this unique circumstance.

NRDC disagrees with MEA's assertion that the California Public Utilities Code 399(e)(3) prohibits the use of electric funding for the purpose of supporting natural gas efficiency programs. MEA selectively cites legislative findings and declarations which state the intent of the legislature. (MEA, p.2-3) While intent language is important for interpretation of the meaning of the statute, it does not by itself create binding legal authority. Second, when read as a whole, the findings and declarations section cited by MEA and found in California PU Code section 399 indicates broad legislative support for <u>all</u> cost-effective energy efficiency. Last, PU code section 381.1(c), cited by MEA, does not contain any language pertaining to comingling of gas and electric efficiency funds. (MEA, p.3) MEA attempts to read such a prohibition into the section on equal treatment of CCA customer territories by efficiency program administrators through the terms "shall require" and "proportional share," but MEA's emphasis does not create a statutory bar.

We therefore maintain that neither the Commission nor any party has identified a legal prohibition to the use of electric efficiency funds to backfill a potential shortfall in natural gas efficiency funding for this unique circumstance.

3. NRDC agrees with DRA that additional financing options should be explored, but urge the discussion to be made within the proper context of determining the details of the extension year.

NRDC agrees with DRA that financing is a "longstanding market barrier in energy efficiency." (DRA, p.3) NRDC further supports DRA's suggestion that the Commission should consider using the surplus funding (identified through this exercise to backfill the potential natural gas efficiency funding shortfall) to support a new financing program. (DRA, p.7-8) While we strongly support the idea of initiating innovative financing approaches, we urge the Commission to consider the use of any excess funding in the larger context of the extension year discussion and the upcoming application cycle, rather than make a determination in the final decision on how to fully fund natural gas efficiency programs in light of the illegal transfer provision in Senate Bill 87.

III. Conclusion

NRDC appreciates the opportunity to reply to party comments on the PD and APD and looks forward to working with the Commission, its staff, and stakeholders to continue to ensure efficiency remains the top priority resource and policy decisions support the growing efficiency industry and the state efforts towards achieving our ambitious climate goals.

Dated: September 27, 2011

Respectfully submitted,

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