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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)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING ENERGY EFFICIENCY FINANCING**

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**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING ENERGY EFFICIENCY FINANCING**

1. Summary

This Ruling requests comments on three separate attachments related to energy efficiency financing programs: 1) an Energy Division proposal on *Desired Energy Efficiency Financing Activity in 2013-14* (Staff Proposal), and two documents that directly informed the Staff Proposal: 2) a report prepared for the Commission by Harcourt Brown & Carey (HB&C) titled *Energy Efficiency Finance in California: Needs and Gaps*, and 3) a proposal prepared by the Environmental Defense Fund (EDF) titled *On Bill Repayment: Unlocking the Energy Efficiency Puzzle*.

These attachments represent potential pathways to implement the direction on energy efficiency financing outlined in a previous Assigned Commissioner's Ruling (ACR) and Scoping Memo issued in this proceeding on October 25, 2011. Specifically, the ACR emphasized energy efficiency financing as a way to achieve deeper energy efficiency retrofits across all sectors by leveraging private capital, in addition to using ratepayer funds to support energy efficiency. Many parties already filed comments in response to the ACR on financing; those comments helped inform the Staff Proposal attached to this ruling.

The ACR also signaled the assigned Commissioner's intent to initiate changes that would reshape the investor-owned utilities' (IOUs') energy efficiency portfolios away from programs that offer temporary or shallow savings and moving towards programs that achieve greater market transformation and better long-term energy savings. Administrative Law Judge Farrar issued a ruling on December 7, 2011 that presented staff-recommended

programmatic guidance on the 2013-2014 energy efficiency portfolio for parties' comments.

This ruling is being issued specifically on the topic of financing, separate from and parallel with, other programmatic areas covered in the December 7, 2011 ruling. Comments on an initial set of strategic policy questions, further described below in Section 6A, are requested on January 25, 2012, with reply comments on January 30, 2012. These comments will help inform development of workshops planned for February 8-10, 2012, as well as additional guidance to the utilities' portfolio development for 2013-2014. An additional round of comments on any or all of the questions presented in this ruling, especially in Sections 6B and 6C, are requested after the workshops on February 17, with reply comments on February 24.

2. Background

A. Policy Framework

In 2008, the Commission adopted the California Energy Efficiency Strategic Plan, which recognized the critical role of financing in helping California to meet its energy efficiency goals – especially for obtaining efficiency improvements to existing homes, businesses, and other facilities. In 2009 in Decision (D.) 09-09-047, the Commission specifically directed Energy Division staff, in consultation with knowledgeable financial experts, to prepare an assessment and plan for ensuring the most promising and effective financing instruments are made available to support widespread adoption of energy efficiency investments.

Later in 2009, the California Legislature enacted Assembly Bill 758 (Skinner),¹ which directed:

- 1) The California Energy Commission (CEC) to develop a comprehensive program to achieve greater energy savings in the state's existing residential and nonresidential building stock, and
- 2) The California Public Utilities Commission to investigate the ability of electric and gas ratepayers to provide funding to support implementation of the program developed by the CEC.

In 2010, Commission staff in Energy Division staff engaged a consulting team from HB&C to accomplish both the Commission's and the Legislature's directions to identify meaningful financing approaches for energy efficiency. Energy Division staff and HB&C together conducted public workshops in November 2010 to explore issues, needs, and promising ideas. HB&C prepared the attached report: *Energy Efficiency Finance in California: Needs and Gaps (July 2011)*, which includes a needs analysis and recommendations for the most effective approaches to facilitate capital investment in energy efficiency in the residential, commercial, and governmental/institutional sectors. The report documents specific mechanisms, and compares them both to the scale of investment needed in California and to the specific needs of borrower market segments.

B. Existing Energy Efficiency Financing Programs at the IOUs

As directed by the Commission in D.09-09-047, each of the large California IOUs offers on-bill financing (OBF) to non-residential customers in the 2010-2012 program cycle. OBF is a way for customers to arrange to pay for energy

¹ Stats. 2009, Ch. 470, Sec. 3. Effective January 1, 2010.

efficiency upgrades without incurring up-front costs. Under this program, a utility provides qualifying customers with unsecured loans which cover 100% of the energy efficiency equipment and installation costs (net of rebates or other incentives). Customers then repay the loans through charges that are added onto their regular utility bills. Loan capital is raised through utility rates and the energy efficiency program budgets cover payment defaults and program administration. Terms set by the Commission include:

- Interest rate: Zero percent.
- Commercial and industrial loan minimum and maximum (per meter): \$5,000-\$100,000.
- Commercial and industrial loan term: typically 5 years, but may be extended to expected useful life of installed energy efficiency measures.
- Institutional loan minimum and maximum: \$5,000-\$1,000,000.
- Institutional loan term: up to 10 years or expected useful life, whichever is less.
- Loans are non-transferrable.
- Partial or non-payment of a loan may result in shut-off of utility service.

For the 2010-2012 program cycle, OBF has a \$41.5 million lending pool across the four large IOUs. As of September 2011, about one thousand loans had been made, totaling \$21 million, and with a default rate of less than 1% (or about \$200,000). Since September 2011, interest in the financing program (OBF) has been robust, resulting in some utilities requesting to transfer additional funds to cover demand for the program.

In California, organizations lending money are subject to laws that are overseen by the California Department of Corporations. The Department of Corporations requires lenders to pay fees based on amounts loaned. Because the

utilities' profits do not come from lending and because the IOUs are regulated by the Commission, the IOUs received a waiver of this requirement. The Department of Corporations granted the exemption provided that the IOUs lend only to the non-residential customer segment (not "consumers"), do not charge for interest, and do not make loans for less than \$5,000 (below which amount is considered a "consumer loan").

Each of the IOUs' OBF programs require "bill neutrality," which means that borrowers' estimated monthly cost savings must exceed the monthly loan installment. In other words, bill neutrality ensures that borrowers' combined payments to the utility for both energy use and loan repayment are lower than the borrowers' utility bill prior to the loan and energy efficiency upgrade.

3. Rationale for Enhancing Emphasis on Financing

The need for financing to enable energy efficiency improvements to existing buildings is not new. It was a cornerstone of the national strategies for residential and commercial building retrofit dating back to the late 1970s and into the early 1980s under federal initiatives to accelerate efficiency actions in response to energy supply crises. Some of this history can be found in the National Energy Conservation Policy Act of 1978 and the associated Residential Conservation Service and Commercial & Apartment Conservation Service.

Today, financing again has risen in importance to combat ever-resistant barriers to maximizing energy efficiency investments in existing buildings. Solving the financing (or cash flow) dilemma offers the potential to overcome numerous barriers, including:

- First Cost: Property owner's or occupant's lack of cash to pay for the residual front-end cost of increased energy efficiency, even with utility or federally-funded rebates;

- Bill Neutrality: Can be designed to better match cash flow of loan repayment to the monthly savings on utility bills;
- Longer Paybacks: Financing can stretch out loan repayment over longer periods that better match the expected paybacks and effective lifetimes of comprehensive and deeper energy efficiency improvement packages;
- Debt Avoidance: For owners of commercial and institutional buildings, off-balance-sheet mechanisms, such as leases, provide the ability to make efficiency improvement repayments out of the same operating budgets that support utility bills, thus avoiding the need to gain access to capital budgets, which is usually more difficult; and
- Split Incentives: This well-known barrier occurs when property owners own the building's energy assets, but the tenants pay the energy operating costs. Thus, few rental properties receive energy improvements.

If California is to meet the ambitious goals we have set for efficiency – both for energy resource and for climate action reasons – Californians will need to invest an estimated \$4 billion or more per year² over the next 20 years. Current levels of investment appear to be about half that amount.³ Utility ratepayer incentives (grants) and utility-originated loans, such as through the current OBF program, is unlikely to be the sole source of capital to support this scale of investment. In fact, private capital (i.e., non-ratepayer funds) can support much of the needed investment as long as financing is available at reasonable interest rates and over long enough timeframes to match the expected cash flow of utility

² HB&C, *Energy Efficiency Financing in California: Needs and Gaps*. 2011 at 4.

³ *Ibid.*

bill savings and loan repayment schedules. What is needed is a financing framework that can attract and support capital delivery at these terms.

The prospect of enabling financing mechanisms that draw upon private capital sources such as banks, credit unions, lease finance companies, and bond issuers offers several potential advantages:

- Leverages ratepayer funds 10:1. The ability to leverage utility ratepayer funding of technical assistance, rebate, and potential credit enhancement or loan guarantee expenditures can help mobilize large amounts of private capital for investment in energy efficiency. Some expect that a dollar of credit enhancement could leverage \$10 or more of energy efficiency investment, thus making it possible to shift funds from rebates into loan support and obtain multipliers of energy efficiency investments.
- Increases sale of energy efficient products and services. An additional tool in the hands of energy efficiency service contractors, energy service companies (ESCOs), and other efficiency providers can result in more sales and new and effective business models for delivering efficiency.
- Reaches a broader set of customers and market segments. The ability to extend energy efficiency market participation to a broader set of customers and market segments that previously lacked the cash or credit standing to arrange funds on their own to pay for energy efficiency projects will be beneficial.

In the past, large capital companies have avoided developing energy efficiency loan mechanisms for several possible reasons:

- Lack of standardization. Large capital companies generally want to see a degree of standardization of products, services, and loan documents that can support a predictable volume of “deal flow” with the potential to amount to hundreds of millions of dollars a year or more, much like occurs in the consumer credit card, home mortgage, or home equity loan markets.

- Uncertain energy savings. There has been a fair amount of uncertainty among bankers and lenders as to whether energy savings are “real” or reliable enough to ensure that savings cash flow will be there and used to repay efficiency loans. As a result, most loan underwriting has been indifferent to the purpose or anticipated cash flow of energy savings for repayment, evaluating potential loan transactions based more on the borrower’s credit than on the economics of the efficiency project itself.
- Unattractive value proposition to lenders and borrowers. The normal risks of unsecured consumer or small business debt mean that lenders typically command market interest rates in the 12-18% range for expenditures of the type and size contemplated for energy efficiency improvements. Such interest rates in turn have appeared too high to borrowers contemplating those investments, especially to go beyond purchasing an Energy Star appliance or office equipment and to invest in larger projects to achieve more comprehensive levels of efficiency, and when the current occupant may only be at that location for three to five years. As explained in HB&C’s report *Energy Efficiency Financing in California: Needs and Gaps* (see Attachment B), interest rates under 10%, and ideally in the 5-7% range, are needed to attract serious borrower interest in making substantial energy efficiency investments. This requires a lender to see the prospect of standardized transaction documents and information, predictable project performance and cash flow, and possibly (at least initially) some pooled risk sharing from utilities or government via credit enhancements to the energy efficiency loan pools.

It appears that California may be at a point where a combination of energy policy goals, diminishing utility energy efficiency program economics, the compelling need for greenhouse gas reduction strategies, capital markets looking for new opportunities, saturation of customer segments with access to their own financing resources, and renewed federal attention to push for large-scale energy

efficiency investments are all coinciding to point to a market opportunity to offer and gain acceptance of new energy efficiency financing products.

4. Summary of HB&C Report

In its report *Energy Efficiency Financing in California: Needs and Gaps*, HB&C identifies where the lack of available or affordable financing impairs energy efficiency adoption. HB&C also describes the potential loans or financing tools that could be created to fill these needs. The following is a summary of the report, organized by sector.

Residential

The HB&C report identified five areas where financing for energy efficiency is either not available or is significantly limited in the residential sector:

- 1) Unsecured loans for energy efficiency have very high interest rates that range from 12-18% at a time when most consumers accept loans that charge less than 10% interest.
- 2) Secured loans, which are used to finance more comprehensive retrofits, are increasingly difficult to obtain in the current economy. Examples of secured loans include home equity loans and second mortgages.
- 3) Low-moderate income households are not served by current lending programs.
- 4) Renters are not served by current lending programs due to “split incentives.”
- 5) Contractors do not have access to lines of credit that can cover their cash flow needs between the time that contractors purchase materials and equipment and the time when a project is completed and they receive payment.

The HB&C report made several detailed recommendations for how to address the needs of the five areas outlined above. In brief, HB&C recommended that the state should create a loan loss reserve to support

unsecured lending, support a secondary market for unsecured loans, create a finance product with a partial guarantee, participate in the federal Department of Housing and Urban Development PowerSaver Secured Loan Program, promote energy efficient mortgages, develop financing products for borrowers with low credit scores, develop on-bill financing or repayment, and promote collection and dissemination of loan-level performance data.

Commercial

HB&C identified five gaps related to finance that hamper the adoption of energy efficiency in commercial sector:

- 1) Property owners do not want to add assets and liabilities to the balance sheet, so they avoid debt.
- 2) Property owners may not meet loan underwriting requirements for traditional loans because they lack liquid collateral.
- 3) Property owners do not often fund projects with paybacks of longer than one or two years and therefore ignore energy efficiency upgrades that offer deeper energy savings.
- 4) Split incentives impede the adoption of energy efficiency in rental property.
- 5) Property owners are reluctant to participate in what they believe to be new and untested business models such as energy services.

The HB&C report recommended that the state develop a revolving energy loan fund, master lease program, on-bill financing for thermal storage, educational campaign on commercial lease financing, and operating capital financial support for ESCOs.

Governmental/institutional

The HB&C report identified two finance-related gaps that limit the mass adoption of energy efficiency in the governmental and institutional sector:

- 1) a general lack of knowledge and expertise with procurement and financing options to fund energy efficiency projects; and
- 2) an absence of funding for poorly-rated or low-rated governmental and institutional owners.

The report made several recommendations that would promote and advance the adoption of energy services models and tax-exempt lease financing.

5. Staff Proposal for Ratepayer Support of Efficiency Finance for 2013-2014

To address the HB&C report recommendations and to be responsive to comments already submitted by parties to this proceeding in response to the October 25, 2011 ACR and Scoping Memo, Energy Division staff have developed a Staff Proposal (see Attachment A) on which additional comments are being sought via this Ruling. The Staff Proposal on energy efficiency financing involves four elements budgeted at a total of \$180 million over two years:

- A. Development of an on-bill repayment (OBR) mechanism.
- B. Development of ratepayer-supported loan products to selected customer segments and for specified purposes, including use of OBR.
- C. Continuation of utility on-bill *financing* until on-bill *repayment* becomes more widely available.
- D. Collecting and sharing aggregate loan and project data with lenders to build a knowledge base and inform project risk analyses.

Each element is discussed below and in greater detail in the Energy Division Proposal for Energy Efficiency Finance Activity in 2013-2014 (Attachment A). Although the Staff Proposal uses assumptions that lead to the recommended level of funding annually, in reality a focus on OBR will require a design and ramp-up period, so this amount is initially proposed over the 2013-2014 program period, ramping up to these annually amounts starting in

2014. In addition, experience during 2013-2014 may further inform the appropriate amount of annually funding beginning in 2015.

A. On-Bill Repayment

In comments and responses to the ACR and Scoping Memo issued October 25, 2011, parties were overwhelmingly supportive of introducing third party lenders and capital to energy efficiency on-bill finance. The EDF Proposal (Attachment C) for OBR⁴ does exactly that: it suggests replacing the current source of limited ratepayer funding for on-bill finance with the larger source of private capital. With OBR, customers access loans from third party lenders to make energy efficiency improvements and then customers repay the loans via a line item on their utility bills.

The Staff Proposal recommends this mechanism for numerous reasons:

- all customer segments can access capital this way;
- it allows customers to see and make immediate tradeoffs between expenditures for energy efficiency improvements and lower utility bills, possibly alongside easier access to financing;
- it will increase the scale of energy efficiency as more customers are able to undertake the energy efficiency improvements;
- OBR mechanics may offer scale economies that can enable lenders to lower the interest rate charges, and
- OBR takes advantage of utility billing collection mechanisms as long as the cost reimbursement for doing so is cost-competitive.

In order to give lenders added security that they will be paid back compared to traditional consumer or business loans (and therefore be able to

⁴ OBR is also sometimes known as on-bill tariff.

offer lower interest rates on loans), OBR ideally brings two enhanced security dimensions:

- 1) Reliance by an efficiency lender on existing utility collections policies and procedures, within the current utility/customer business relationship, for handling any customers behind on their payments. This includes payments for partial payments, balanced payment plans, and progressive warnings before service could be terminated. The desire to maintain utility service is expected to add security to an efficiency loan.
- 2) An ability to allow the customer and/or property owner to authorize on-bill efficiency loan repayment tied to the meter, and not exclusively to the individual borrower. Therefore, with appropriate notification and disclosure, the Staff Proposal recommends that a successor owner or occupant would continue making efficiency payments for the duration of the loan term. This could open the door for more comprehensive, deeper efficiency actions whose payback periods might extend beyond the anticipated tenure of a current owner or occupant. This likely could reach into a borrower pool of customer who, up until now, have been under-represented in the efficiency improvement market.

Unlike OBF, OBR involves third-party capital. Since the IOUs would not be originating loans, they would not be subject to the current limitations set by the California Department of Corporations. This means OBR could be available to all types of borrowers, including residential customers. Attachment C contains more detailed information on the concept of OBR, as put forth by EDF.

The Staff Proposal suggests that approximately \$10 million in funding for 2013-2014 may be necessary to make upgrades to allow utility billing systems to accommodate OBR.

B. Ratepayer-Supported Loan Products

To ensure that low-interest-rate loans for energy efficiency are available by a mix of community lenders and mass market lenders, the Staff Proposal

suggests that the Commission allocate \$130 million of the 2013-2014 energy efficiency program portfolio to create subsidized loan products offered via OBR. The Staff Proposal recommends that lenders offer these ratepayer-supported loan products to residential and non-residential customers with increasingly lower interest rates for deeper retrofits, and that the IOUs or other organizations initiate pilots to test the effectiveness of, and create best practices for, offering ratepayer-supported loan products to rental properties.

The Staff Proposal suggests that any and all ratepayer-supported loan products created in the 2013-2014 period should build on the momentum and lessons learned from the California Alternative Energy and Advanced Transportation Financing Authority's (CAEATFA's) Clean Energy Upgrade loan loss reserve program.

C. On-Bill Financing Until On-Bill Repayment is Available

To continue to build momentum for energy efficiency loans and to collect loan performance data, the Staff Proposal recommends that the IOUs continue to offer OBF funded at \$40 million during 2013-2014, until the point that loans are available via OBR.

D. Loan and Project Data

Discussions at the November 2010 California Public Utilities Commission (CPUC)-hosted energy efficiency finance workshops, the HB&C report, and a report by the American Council for an Energy Efficiency Economy (ACEEE) titled *What Have We Learned from Energy Efficiency Finance Programs*,⁵

⁵ Sarah Hayes, Steven Nadel, Chris Granda, and Kathryn Hottel, ACEEE. September 2011.

each highlighted the need for lenders to receive and understand energy savings data to build confidence in the reliability of the energy savings from projects. The Staff Proposal suggests collecting and sharing such aggregate data as soon and frequently as possible.

6. Questions to be Addressed

A number of questions must be answered both by the Commission, as to the overall goals to set for increasing the financing mechanisms made available to support expanded energy efficiency activity, as well as by lenders and program administrators, who will design the loan products and support programs to facilitate the use of these financing mechanisms. Even in response to the preliminary mention in the October 25, 2011 ACR and Scoping Memo of expanding the role of financing in 2013-2014, many parties made extensive comments and suggestions for how to proceed and raised even more questions still to be answered.

In order to ensure steady progress without overwhelming this proceeding with the range and number of issues to be addressed, this ruling organizes some key questions into three categories:

Strategic Policy Questions

In the first set of questions, this ruling poses a small number of overall policy goals to guide the establishment of a more robust set of financing strategies and mechanisms, to help the Commission offer guidance to the utilities and other market stakeholders to shape the 2013-2014 program portfolios. Parties' comments on these questions are requested earlier in the process (in January), to help Commission staff develop the content of the February workshops and make them most productive by engaging market participants who may not often participate in regulatory proceedings.

Program Design and Operational Questions

These questions are more detailed second-level questions related to preferences for target markets, degree of ratepayer funding support, roles of utilities and other entities, and other such issues that will guide the subsequent development of specific financing mechanisms and products. Developing answers to these questions demands a certain amount of background and/or expertise in the use of financing mechanisms. To enable the most informed responses to these questions, Commission staff are organizing targeted workshops in February and inviting key experts to help share experience in these areas. Parties are invited to offer opinions on these questions after the workshops in February.

Detailed Program Implementation Questions

These questions are a third level of detailed program and operational issues that affect specific financing programs and terms. These details will most likely not be determined by the Commission but rather by the program implementers. They are included here because some parties raised them and to be sure that we are developing a complete picture of all of the implementation details necessary to launch new financing mechanisms. Parties are also invited to comment on any or all of these questions after the workshops in February.

In addition, if parties believe there are additional critical questions beyond those identified below that should be added to any of the above categories, those issues should be identified in comments in January. Also, if any party believes that an issue should be moved to a different category (e.g., because of the policy or portfolio-shaping implications, or preference to resolve an issue in an earlier or later timeframe), those preferences and the reasons for them should also be identified in the first set of comments in January.

A. Strategic Policy Questions

1. Suggested Set of Overall Goals for a CPUC Efficiency Financing Program

CPUC staff suggest the following goals for a financing program:

- Utilize financing to help reduce the total cost of energy services, i.e. the combined cost of consumed energy and payments for efficiency improvements that lead to maximizing efficiency. Call upon these mechanisms to introduce new business models and marketing approaches that will help expand the level of efficiency market activity.
- Broaden the range of borrowers who are able to undertake energy efficiency investments and who fall within loan and program eligibility and/or qualifying criteria, compared to current rates of efficiency in the market.
- Facilitate lower interest rates that lenders charge to cover their risks; obtain interest rate levels in the market that attract borrowers and facilitate expanded energy efficiency investment.
- Inform borrowers and lenders of the predicted financial performance of energy efficiency improvement projects, and develop a database of efficiency loan repayment history to inform subsequent loans.
- Assure or guarantee loan repayments, at acceptable risk exposures, if lenders are not yet ready to offer loans at reasonable terms to target borrowers undertaking desirable efficiency projects.

1. Do you agree with the above suggested programmatic goals, or would you add others? Would you eliminate any?

2. High Level Questions about the Staff Proposal

Parties should feel free to comment on any or all aspects of the Staff Proposal in Attachment A. Below are a few questions to help guide parties' input.

2. Do the financing program elements in the Staff Proposal address the most important needs and gaps in the energy efficiency improvement market as far as financing availability is concerned? Why or why not?

3. Is the emphasis on OBR appropriate? Why or why not? Would you prefer emphasis on other mechanisms such as OBF or loan guarantees, etc.?

4. Are there additional elements that you think should be addressed in 2013-2014 and, if so, what are these elements and what evidence can you cite for why these issues also should be addressed?

5. Do you agree with the suggested funding levels in the Staff Proposal? If you propose different funding levels, please explain why.

6. What issues, if any, do you see with emphasis on OBR in general?

7. What issues, if any, do you see with the suggestion to extend OBR to the residential market?

8. Do you recommend that OBF and/or OBR programs focus on or prioritize particular market segments (e.g., government, water and wastewater, small commercial, single-family residential, etc.) and if so, what is your justification?

9. The Staff Proposal identifies the inherent uncertainty over the pace of ratepayer-supported financing and thus the funding level necessary to support these loans. Will the “flexibility mechanisms” identified in the Staff Proposal (to require utilities to shift funds from other programs if financing demand exceeds the level of funds budgeted for financing, or to require the utilities to submit a motion for budget augmentation) suffice to ensure that financing program funds can respond to market demand? If not, what other approach(es) do you recommend?

3. High Level Questions about the HB&C and EDF Reports

As with the Staff Proposal, parties should feel free to comment on any or all aspects of the HB&C and EDF reports. The questions below are offered as a guide for parties' input.

10. Do you concur with the compendium of information and conclusions in the HB&C report? If not, what additional information do you believe should be considered, and what sources do you recommend for doing so?

11. Do you dispute any of the primary findings and conclusions from either study? If so, for what reasons, with what alternative data and findings, and with what implications for the suggested financing program goals as stated above?

12. Are you aware of specific technical or financial barriers to proceeding with some kind of OBR mechanism for loans made by lenders other than the customer's/borrower's utility?

13. Please identify any legal impediments you see with associating OBR payment obligations with the meter rather than the individual borrower.

B. Program Design and Operational Questions

As described above, these are questions that will be better informed by the workshops scheduled for February and will need to be answered in the course of development of the financing programs themselves for inclusion in the utility energy efficiency portfolios for 2013-2014. Comments on these issues and questions will be due in February after the workshops have taken place.

1. Suggested Set of Overall Public Policy Objectives for a Ratepayer Supported Program

Commission staff suggests the following public policy objectives surrounding utility-facilitated lending and/or ratepayer funding support:

- Ensure quality control that enhances the predictable energy savings, cash flow, and thus loan performance to borrower and lender of energy efficiency investment projects.
 - Standardize documentation and data associated with energy efficiency investments and loan transactions to ensure low-cost underwriting in volume, and create the information environment needed to support a secondary capital market.
 - Establish convenience and acceptability of loan payment mechanisms, such as OBR, improving cash flow from energy efficiency performance in a way that increases ability and willingness of energy users and/or facility owners to invest in and make efficiency loan payments.
 - Take advantage of existing and enhanced utility billing systems if these will facilitate loan repayment convenience, acceptability, performance, and/or servicing costs so as to expand energy efficiency investment participation.
 - Ensure easy, affordable, fair, and non-controversial mechanisms to handle potential on-bill loan repayment arrears or defaults, especially for loans to small users or for small loan amounts.
1. Do you agree with the above suggested public policy goals, or would you add others? Would you eliminate any?

2. Function and Boundary Issues for Loans and Entities Servicing Loans

2. What loan originators or lenders can utilize the OBR mechanism? Should these be limited to traditional lending institutions such as banks, credit unions, and community development financial institutions? Or should non-lenders be able to arrange financing and collect payment via OBR (e.g., ESCOs, energy service providers)?
3. Should IOUs be able to propose to be loan originators? Why or why not? For what types of customers?

4. What are reasonable splits of responsibilities among lender, borrower, and utility?
5. The Commission has identified a need to integrate demand-side management programs within its jurisdiction in order to enable offerings of integrated packages that will maximize savings and efficiencies of utility programs. Can loans (either OBF or OBR) include non-energy-efficiency measures such as demand response, distributed generation, electric vehicle charging stations, water efficiency, etc.? If so, with what policy or programmatic connection? Where should the boundaries be drawn? What operational or implementation details would need to be considered?
6. What are appropriate criteria for accepting specific energy efficiency investment projects and/or energy efficiency financing programs permitted to use the OBR mechanism? For example, should OBR transactions be limited to those with some kind of utility programmatic connection to assure the measures are appropriate, meet quality standards, or are otherwise “vetted” and thus good prospects for investment?
7. Must there be some determination either for an individual borrower, or for a program or lender as a whole, that loan purposes and terms are reasonable and can be included on the utility bill? Should reasonableness take into consideration the combined cost of utility service and the energy efficiency loan repayments?

8. How much of an eligible loan transaction must be devoted to going beyond minimum efficiency levels⁶ to qualify as an energy efficiency loan? A percentage of the loan value or some other measure?
9. To what extent can energy efficiency measures financed fall outside of utility programs and their specific targeted measures?
10. Should there be some advantageous underwriting or interest subsidy for projects that involve “deeper” levels or more “comprehensive” efficiency improvements?
11. If financing is not offered in the marketplace for otherwise qualified or desirable borrowers, should there be a default lender, and if so, what kinds of entities, through what process, and at what maximum costs?

**3. Options for Connecting Repayment
Obligations with the Meter and not the Initial
Borrower**

12. What is the legal basis, if any, for allowing payment obligations to extend to a successor owner or occupant that is also a utility customer assigned to the same meter?
13. Who has the right to exercise extension of an obligation to a new occupant or owner? The lender, initial borrower, or successor occupant/customer?

⁶ For example, if a homeowner’s furnace breaks down and he/she must otherwise buy a minimum standard unit with 80% efficiency with a cost of \$2,500, should OBR support the full energy efficiency unit transaction to buy a \$3,200 furnace with 96% efficiency or a \$4,000 furnace with variable speed motor and modulating burner? If there is any additional loan guarantee support in the form of credit enhancement or interest rate support, should this cover only the incremental value of efficiency above the basic unit’s \$2,500 cost?

14. What should be the disclosure, notice, and acceptance requirements to the successor occupant/utility customer, the form of such notice/acceptance (whether explicit or implicit), and the process for administering these notice requirements?
15. Does a loan become “due and payable” by the initial borrower if a successor declines to accept the repayment obligation?
16. Should the meter transfer option be made available to all borrowers, or should there be any restrictions on what customer segments or kinds of projects can utilize it?

4. Handling Partial Payments, Arrears, and Defaults

Under current utility tariffs for OBF for non-residential customers:

- A borrower voluntarily undertakes the energy efficiency project and loan and accepts the terms of the OBF loan tariff;
 - Any partial payment is pro-rated across utility bill items (e.g., across gas, electric, and the OBF loan repayment);
 - If the customer fails to pay a bill in full, standard utility collections procedures and due process apply;
 - Once all other remedies are exhausted, the last resort is for the utility to terminate service for non-payment, an outcome that the customer accepts under the OBF tariff agreement.
17. Should these same policies apply to energy efficiency loans made by non-utility lenders? This would mean that the lenders using OBR must agree to accept a utility’s standard billing collection and redress procedures and cannot seek special treatment unique to the energy efficiency loan portion of the overall status of the utility bill. This would also mean that there is some potential for customers to have their utility service disconnected if they persistently fail to pay, even partially, either their loan obligation under OBF

or OBR, their utility bill, or both. This is consistent with current practice.

Any change to the underlying disconnection policies related to non-payment of the portion of the bill devoted to utility services would require notice and need to be conducted outside of this proceeding. However, parties are welcome to comment here on any recommended changes to these procedures that would be necessary or desirable for energy efficiency financing program purposes (for collections related to the energy efficiency loans) and/or how the existing rules should be applied in the context of financing programs.

18. Should these same policies apply to energy efficiency loans to residential customers? Why or why not?

5. Determining Ratepayer Support of Financing Transactions

19. Who should support costs of billing system upgrades and/or operating expenses?
20. When might financial support or underwriting of an energy efficiency loan pool be appropriate?
21. Using what criteria might possible mechanisms or products be chosen and prioritized for support – through traditional benefit/cost ratios, cost of saved energy, target levels of leverage (e.g., a 10% or 15% loan loss reserve mechanism), or some other metric?
22. Should any support be targeted to customers who otherwise cannot meet traditional market lending criteria?

C. Detailed Program Implementation Questions

Similar to the Program Design and Operational questions in the section above, below are questions that will need to be answered by those entities actually implementing the financing programs. If parties wish to comment on

any of these questions, these comments are also requested after the workshops in February.

1. Function and Boundary Issues for Loans and Entities Servicing Loans

1. What are the criteria for accepting participating lenders?
2. Are there maximum loan terms that are acceptable (e.g., caps on permissible interest rates charged)?
3. What degree of uniformity or standardization (at least for data and documentation) should be required?
4. What entity or entities should be sought to administer a loan loss reserve form of subsidy, or an interest rate write-down subsidy? (e.g. a state agency, non-profit, governmental, utility, or private financial entity? Or a specific entity such as CAEATFA?)
5. What roles, if any, should utilities play in informing customers about financing available and/or actively promoting specific or all financing mechanisms?
6. To what extent can energy efficiency measures financed fall outside utility programs and their targeted measures?
7. What is the role of the utility or the CPUC in any financial or performance disputes between the borrower and his/her lender or the energy efficiency installer?

2. Options for Connecting Repayment Obligations with the Meter and not the Initial Borrower

8. What other conceptual or operational details need to be addressed?

9. What notice and disclosure mechanisms should be used (e.g., as a condition of receiving utility service or being able to buy or lease residential or non-residential property)?
10. What entity would administer disclosures, and could an owner refuse to allow a tenant to enter such a transaction?
11. What are the mechanics for transferring loans to the next owner or occupant using the meter?

3. Handling Partial Payments, Arrears, and Defaults

12. How should partial or missing payments be handled when there are both utility and lender charges on the same bill (e.g., pro-rate all revenue across line items on the bill, pay funds toward the utility bill first, or apply payments to the largest line items first)?

4. Determining Ratepayer Support of Financing Transactions

13. Are there any guidelines for reasonableness of IOUs' billing costs incurred or fees to be charged to lenders for access to OBR?
14. How should an affordable amount or cost-effectiveness limit for ratepayer support be determined?
15. To what extent can traditional rebate and incentive funding be reduced once financing mechanisms better match cash flow to energy savings and non-energy benefits received?
16. If ratepayer support is warranted for individual loans or loan programs, for whom, under what conditions, and up to what amounts?
17. Should the degree of any loan support vary with customer segments, degree of energy efficiency achieved, or other factors?

18. Might ratepayer support outlay be able to be limited if financing is tied into natural transaction points, such as through lease agreements, tenant or owner turnover, etc.?
19. How should private or local government entities be encouraged to offer loans not otherwise available (e.g., to reach target markets)?
20. If a state agency participates as a loan originator (drawing on ratepayer funds as loan capital) or administers credit enhancement support using ratepayer funds, how can this access to ratepayer funding be protected from potential use for state budget purposes by the Legislature?

5. Managing Information on Energy Efficiency Project and Loan Performance

21. What data should be available (presumably in aggregate form, not customer-specific unless the customer authorizes) to contractors and/or lenders about energy efficiency investment projects and for what kinds of projects or customers?
22. Should this differ among projects with:
 - No utility financing but some form of utility program participation
 - External financing but participating in OBR
 - External financing with no utility program or OBR involvement?
23. What kind of credibility with lenders should a database administrator have, and what kind of non-disclosure agreements or other forms of confidentiality protection may be needed?

6. Utility Credit for Energy Efficiency Savings Facilitated With Financing Programs

24. Should utilities receive energy efficiency savings credit towards their energy efficiency goals resulting from financing using OBR or other new financing

mechanisms utilizing a combination of ratepayer and third party capital?

What about when measures or projects do not otherwise participate in a utility portfolio program?

25. In situations where only private capital is used for financing, with utility payment facilitation, what kinds of data collection or evaluation requirements should be placed on third parties to help the Commission and stakeholders understand the impacts of these programs?
26. What treatment should any credited energy efficiency savings have in any potential future shareholder “risk reward incentive mechanism” determinations?
27. In cases where financing is paired with other incentives or programs, what protections need to be in place to prevent the potential for double-counting of savings? Should “credit” be proportional to budget/financial contribution?

7. Next Steps and Schedule

A combination of workshops and parties’ comments will help facilitate moving the ball forward on financing programs as soon as possible. Because financing programs are a unique adjunct to other energy efficiency programs with which the Commission has more experience, and because development of additional financing programs would be most effective if Commission staff and utilities engage with stakeholders and market players who may not necessarily typically participate in Commission proceedings, development of financing strategies is being handled on a parallel track to other guidance for the 2013-2014 program period.

The comment and workshop schedule below is therefore geared to allowing for high-level policy comments and guidance to help inform the

Commission's decision on guidance to the utilities in 2013-2014, with an initial round of comments on the questions presented in Section 6A of this ruling in January. These comments will also help inform workshop preparation. Then, following the workshops, an additional round of comments will be allowed on any of the questions presented in Sections 6B and 6C of this ruling, and any other issues that may arise during the workshops on which parties wish to comment.

As a result of the second round of comments, I anticipate that the assigned Commissioner may wish to issue an Assigned Commissioner's Ruling giving further direction to the utilities for preparation of their 2013-2014 program portfolios specifically related to financing program design or implementation.

Item	Date
Comments due on questions presented in Section 6A of this Ruling and any other aspects of the Staff Proposal or HB&C or EDF reports	January 25, 2012
Reply comments due on questions presented in Section 6A, plus the Staff Proposal and HB&D and EDF reports	January 30, 2012
Workshops (further details forthcoming in late January from Commission staff)	February 8-10, 2012
Comments due on questions presented in Sections 6B and 6C of this Ruling and any other topics raised in workshops	February 17, 2012
Reply comments due on questions presented in Sections 6B and 6C and workshop topics	February 24, 2012
Further guidance to utilities for 2013-2014 portfolio filings in an ACR (if needed)	Late March or early April 2012

IT IS RULED that:

1. Interested parties may file and serve comments on the Staff Proposal (Attachment A), the Harcourt Brown and Carey Report (Attachment B), the Environmental Defense Fund Report (Attachment C), and/or the questions presented in Section 6A of this ruling by no later than January 25, 2012.

2. Interested parties may file and serve reply comments on the Staff Proposal (Attachment A), the Harcourt Brown and Carey Report (Attachment B), the Environmental Defense Fund Report (Attachment C), and/or the questions presented in Section 6A of this ruling by no later than January 30, 2012.

3. Workshops on financing mechanisms will be held on February 8-10, 2012 at the Commission in the Auditorium at 505 Van Ness Avenue, San Francisco, California. Details will follow from Commission staff.

4. Interested parties may file and serve comments on any issues raised during the workshops, and/or any questions raised in Section 6B and 6C of this Ruling, no later than February 17, 2012.

5. Interested parties may file and serve reply comments on any issues raised during the workshops, and/or any questions raised in Section 6B and 6C of this ruling, no later than February 24, 2012.

Dated January 10, 2012, at San Francisco, California.

/s/ JULIE A. FITCH
Julie A. Fitch
Administrative Law Judge