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06-20-12

10:44 AM

JF2/acr 6/20/2012

**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 PROCEDURES FOR LOCAL GOVERNMENT REGIONAL  
ENERGY NETWORK SUBMISSIONS FOR 2013-2014 AND FOR COMMUNITY  
CHOICE AGGREGATORS TO ADMINISTER ENERGY EFFICIENCY  
PROGRAMS**

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## **1. Summary**

This ruling provides direction to entities interested in submitting proposals to the Commission for local government regional energy network pilot programs, as provided for in Decision 12-05-015.

In addition, the ruling requests comments from parties to refresh the record in this proceeding on the subject of how community choice aggregators (CCAs) will be able to participate in administering energy efficiency programs on behalf of the customers and/or geographic areas they serve. In the meantime, this ruling directs CCAs how to make such requests while the permanent procedures for program cycles beginning in 2015 are under consideration and finalized by the Commission.

## **2. Background**

### **A. Local Government Regional Energy Networks**

On May 10, 2012, the Commission adopted Decision (D.) 12-05-015, which, among many other things, allows for Commission consideration of proposals for local government regional energy networks (RENs) separately from the investor-owned utility (IOU) applications for their 2013-2014 energy efficiency portfolios.

Ordering Paragraph 34 of D.12-05-015 states:

Any Program Implementation Plan submitted by a local government shall demonstrate the extent to which the proposed regional pilots:

- a. Leverage additional state and federal resources so that energy efficiency programs are offered at lower costs to ratepayers;
- b. Address the water/energy nexus;
- c. Develop and deploy new and existing technologies;

- d. Address workforce training issues;
- e. Address hard-to-reach customer segments such as low to moderate income residential households and small to medium sized businesses; and
- f. Include an organizational chart that identifies the local governments that are part of the proposed regional pilot, a narrative description of each of their roles, and plans to coordinate.

Further, Ordering Paragraph 35 of D.12-05-015 states: "Commission Staff shall conduct and/or oversee the evaluation of any local government pilots selected, in a manner consistent with the process set forth for evaluation of utility programs in Decision 10-04-029 and other decisions."

Finally, text on page 149 of D.12-05-015 states: "We envision approval either in the application proceedings [for the utility 2013-2014 program portfolios], or via advice letter depending on the timing, but we defer specifics to the evaluation of the proposals."

### **B. Community Choice Aggregator Administration of Energy Efficiency Programs**

Phase II of this proceeding, which began on September 22, 2010, with the issuance of an Assigned Commissioner Ruling (ACR) and Scoping Memo, was designed to address the Commission's procedures for community choice aggregators (CCAs) to apply to administer cost-effective energy efficiency and conservation programs, which were originally established in D.03-07-034.<sup>1</sup>

The September 22, 2010 ACR directed a workshop on the topic, which was held on September 27, 2010. On October 22, 2010, a Joint Workshop Report was

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<sup>1</sup> See D.03-07-034, Finding of Fact 2 and Ordering Paragraph 1.

filed and served by Pacific Gas and Electric Company (PG&E) on behalf of itself, Southern California Edison Company (SCE), City and County of San Francisco (CCSF), Marin Energy Authority (MEA), Natural Resources Defense Council (NRDC), San Joaquin Valley Power Authority, and Women's Energy Matters (WEM). In response to the Joint Workshop Report, comments were filed on October 29, 2010, by MEA, NRDC, PG&E, San Diego Gas and Electric Company (SDG&E), SDG&E, SCE, The Utility Reform Network (TURN), and WEM. Reply comments were filed on November 4, 2010, by CCSF, the Division of Ratepayer Advocates (DRA), MEA, NRDC, PG&E, SDG&E, SCE, TURN, and WEM. To date, the Commission has not taken any action on the issues outlined in the Joint Workshop Report or the comments and replies on it.

Subsequently, Senate Bill (SB) 790 (Leno, Stats. 2011, Ch. 599) was passed by the Legislature and signed by the Governor on October 8, 2011. SB 790 amended the provisions in Public Utilities Code Section 381.1<sup>2</sup> to provide an additional option for CCAs to elect to become administrators of cost-effective energy efficiency programs. Section 381.1 is set forth below, with the new language added by SB 790 shown in italics.

Section 381.1:

- (a) No later than July 15, 2003, the commission shall establish policies and procedures by which any party, including, but not limited to, a local entity that establishes a community choice aggregation program, may apply to become administrators for cost-effective energy efficiency and conservation programs established pursuant to Section 381. In determining whether to approve an application to become administrators *and subject to an*

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<sup>2</sup> All references are to the Public Utilities Code unless otherwise specified.

*aggregator's right to elect to become an administrator pursuant to subdivision (f)*, the commission shall consider the value of program continuity and planning certainty and the value of allowing competitive opportunities for potentially new administrators. The commission shall weigh the benefits of the party's proposed program to ensure that the program meets the following objectives:

- (1) Is consistent with the goals of the existing programs established pursuant to Section 381.
  - (2) Advances the public interest in maximizing cost-effective electricity savings and related benefits.
  - (3) Accommodates the need for broader statewide or regional programs.
- (b) All audit and reporting requirements established by the commission pursuant to Section 381 and other statutes shall apply to the parties chosen as administrators under this section.
- (c) If a community choice aggregator is not the administrator of energy efficiency and conservation programs for which its customers are eligible, the commission shall require the administrator of cost-effective energy efficiency and conservation programs to direct a proportional share of its approved energy efficiency program activities for which the community choice aggregator's customers are eligible, to the community choice aggregator's territory without regard to customer class. To the extent that energy efficiency and conservation programs are targeted to specific locations to avoid or defer transmission or distribution system upgrades, the targeted expenditures shall continue irrespective of whether the loads in those locations are served by an aggregator or by an electrical corporation. The commission shall also direct the administrator to work with the community choice aggregator, to provide advance information where appropriate about the likely impacts of energy efficiency programs and to accommodate any unique community program needs by placing more, or less, emphasis on

particular approved programs to the extent that these special shifts in emphasis in no way diminish the effectiveness of broader statewide or regional programs. If the community choice aggregator proposes energy efficiency programs other than programs already approved for implementation in its territory, it shall do so under established commission policies and procedures. The commission may order an adjustment to the share of energy efficiency program activities directed to a community aggregator's territory if necessary to ensure an equitable and cost-effective allocation of energy efficiency program activities.

- (d) *The commission shall establish an impartial process for making the determination of whether a third party, including a community choice aggregator, may become administrators for cost-effective energy efficiency and conservation programs pursuant to subdivision (a), and shall not delegate or otherwise transfer the commission's authority to make this determination for a community choice aggregator to an electrical corporation.*
- (e) *The impartial process established by the commission shall allow a registered community choice aggregator to elect to become the administrator of funds collected from the aggregator's electric service customers and collected through a nonbypassable charge authorized by the commission, for cost-effective energy efficiency and conservation programs, except those funds collected for broader statewide and regional programs authorized by the commission.*
- (f) *A community choice aggregator electing to become an administrator shall submit a plan, approved by its governing board, to the commission for the administration of cost-effective energy efficiency and conservation programs for the aggregator's electric service customers that includes funding requirements, a program description, a cost-effectiveness analysis, and the duration of the program. The commission shall certify that the plan submitted does all of the following:*
  - (1) *Is consistent with the goals of the programs established pursuant to this section and Section 399.4.*

- (2) *Advances the public interest in maximizing cost-effective electricity savings and related benefits.*
- (3) *Accommodates the need for broader statewide or regional programs.*
- (4) *Includes audit and reporting requirements consistent with the audit and reporting requirements established by the commission pursuant to this section.*
- (5) *Includes evaluation, measurement, and verification protocols established by the community choice aggregator.*
- (6) *Includes performance metrics regarding the community choice aggregator's achievement of the objectives listed in paragraphs (1) to (5), including, and in any previous plan.*
- (g) *If the commission does not certify the plan for the administration of cost-effective energy efficiency and conservation programs submitted by a community choice aggregator pursuant to subdivision (f), the community choice aggregator electing to administer these programs may submit an amended plan to the commission for certification. No moneys may be released to a community choice aggregator unless the commission certifies the plan pursuant to subdivision (f).*

### **3. Procedures for REN Pilot Proposals**

To facilitate Commission consideration of proposals for REN pilots, this ruling gives direction on the logistics for filing of those proposals. We request that any local government entity desiring to make a proposal for a REN take the following steps:

1. Prepare a document that follows, to the extent applicable, the guidance circulated by Energy Division for the 2013-2014 applications and located at the following web site: <http://eega.cpuc.ca.gov/StandardTables/GuidanceDocument.aspx> (select "2013-2014 Guidance" as the Document Type).
2. Title the document "Motion for consideration of [REN or Program Name]."

3. File the Motion in the Application proceeding(s) for the applicable utility's 2013-2014 energy efficiency program portfolios. The Commission anticipates issuing a ruling consolidating the utility applications shortly after their filing.
4. File the Motion no later than July 16, 2012, and serve it on the service list of this proceeding (Rulemaking (R.) 09-11-014) and the 2013-2014 energy efficiency portfolio Application proceeding(s).
5. The filing of such a Motion will automatically confer party status in the Application dockets on the party making the filing, as long as the filing is made on or before the due date. Otherwise, normal Commission rules apply.
6. In the Motion containing the proposal, the proponent(s) should, to the extent possible, indicate identified areas where the proposal overlaps with programs and/or measures proposed in the IOUs' portfolio applications.

#### **4. Long-Term Procedures for CCAs**

Section 381.1 now contains two different options for CCAs who wish to administer cost-effective energy efficiency and conservation programs; CCAs may apply for funding under the provisions of § 381.1(a); or CCAs may elect to become administrators of energy efficiency funds collected only from the aggregator's electric service customers under the provisions of § 381.1 (e) and (f).

When applying under § 381.1(a), CCAs may propose programs within or even beyond their geographic areas, to serve their own electricity customers or to serve those who may have opted out of CCA service within their geographic areas, similar to any other local government or third party program. The program proposal need not be limited to the customers served by the CCA and the funding is not limited to the funds collected from their customers. However, the approval of such a program proposal is discretionary by the Commission, which must consider "the value of program continuity and planning certainty

and the value of allowing competitive opportunities for potentially new administrators,” and shall “weigh the benefits of the party’s proposed program” and ensure that it meets the following criteria included in § 381.1(a)(1)-(3):

- (1) Is consistent with the goals of the existing programs established pursuant to Section 381.
- (2) Advances the public interest in maximizing cost-effective electricity savings and related benefits.
- (3) Accommodates the need for broader statewide or regional programs.

Under subsection (e), by contrast, a CCA may “elect to become the administrator of funds collected from the aggregator’s electric service customers and collected through a nonbypassable charge authorized by the Commission, for cost-effective energy efficiency and conservation programs, except those funds collected for broader statewide and regional programs authorized by the commission.”

CCA administration of these cost-effective energy efficiency and conservation programs is then further subject to § 381.1(f), which states the following:

- (f) A community choice aggregator electing to become an administrator shall submit a plan, approved by its governing board, to the commission for the administration of cost-effective energy efficiency and conservation programs for the aggregator’s electric service customers that includes funding requirements, a program description, a cost-effectiveness analysis, and the duration of the program. The commission shall certify that the plan submitted does all of the following:
  - (1) Is consistent with the goals of the programs established pursuant to this section and Section 399.4.
  - (2) Advances the public interest in maximizing cost-effective electricity savings and related benefits.

- (3) Accommodates the need for broader statewide or regional programs.
- (4) Includes audit and reporting requirements consistent with the audit and reporting requirements established by the commission pursuant to this section.
- (5) Includes evaluation, measurement, and verification protocols established by the community choice aggregator.
- (6) Includes performance metrics regarding the community choice aggregator's achievement of the objectives listed in paragraphs (1) to (5), including, and in any previous plan.

Under the provisions of subsection (f), the Commission's role appears to be limited to certifying that the CCA's plan meets all of the objectives listed. The CCA's funding options also appear to be more limited than under subsection (a), since according to subsection (e), the CCA's access to funding is limited to the funds collected from its own electric customers, after subtracting out funding required for statewide or regional programs. Under subsection (a), the CCA could administer a program for all customers in its territory, regardless of whether customers received their electricity from the CCA, the electrical corporation, or some other entity.

To account for the funding for statewide or regional programs under § 381.1, subsections (e) and (f), I suggest that the CCA's funding request should be limited by the following formula:

CCA maximum funding = Total electricity energy efficiency nonbypassable charge collections from the CCA's customers - (total electricity energy efficiency nonbypassable charge collections from the CCA's customers \* % of the applicable IOU portfolio budget that was dedicated to statewide and regional programs in the most recently authorized program cycle).

Further, I suggest the following definitions of terms and clarifications:

- “Statewide programs” – Programs, as defined and designated by the Commission, that are offered throughout the four investor-owned utilities (IOUs’) service territories on a generally consistent basis. Evaluation, Measurement and Verification budgets are included in statewide programs, as these budgets are overseen by Commission staff across all four IOUs on a consistent basis.
- “Regional programs” – Programs offered to all eligible customers throughout an individual IOU’s service territory in which a CCA is offering service, but not necessarily offered in other IOU service territories. This includes state and institutional government partnerships. This does not include any programs that are offered only in a geographic subset of an IOU territory.
- “Collections” – Funds collected or reasonably expected to be collected from the date the CCA’s energy efficiency administration plan was submitted to the Commission, through the end of the period of operations of programs under the plan.
- “% of the applicable IOU portfolio budget” – As calculated based on the program funding levels most recently approved by the Commission.

For purposes of CCA proposals under either subsection (a) or (e) and (f), for programs beginning in 2015, I suggest that the CCAs submit their proposals at the same time the utilities submit their energy efficiency program portfolio applications, to facilitate concurrent review and assist the Commission in making various determinations required by § 381.1.

The CCAs should be required to specify whether their proposal is being made under the application process under subsection (a) or using the election process under subsections (e) and (f). The CCA’s request should include sufficient information to allow the Commission to evaluate whether the proposal

meets the criteria under the applicable subsection of § 381.1. Also note that according to the statutory language, all proposals are to be for “cost-effective” energy efficiency and conservation programs. Thus, it seems appropriate for the CCA administrator proposals to follow the same rules laid out for utility energy efficiency program portfolio applications, as applicable.

Any party interested in commenting on (1) the proposed funding formula and definitions of terms for CCA energy efficiency program administration elected under § 381.1(e) and (f); and/or (2) the appropriate procedures for CCAs to file energy efficiency program proposals for 2015 and beyond may file and serve comments on the suggestions in this ruling, and/or refresh their comments on the October 22, 2010 Joint Workshop Report, by no later than August 10, 2012, with reply comments by August 17, 2012.

#### **5. CCA Procedures for 2012 and 2013-2014 Funding**

While the Commission evaluates the appropriate procedures for receiving and evaluating CCA proposals for administering cost-effective energy efficiency and conservation programs for 2015 and beyond, the Commission has already ordered portfolio applications for the 2013-2014 program period in D.12-05-015. In addition, any CCA in existence in 2012 also has the option to request Commission certification of a plan under § 381.1 (e) and (f) at any time. Thus, an interim procedure is needed immediately. This ruling offers two different procedures depending on whether the CCA is making its application under the provisions of § 381.1(a) or utilizing the election process under § 381.1 (e) and (f).

#### **A. CCA Applications Under § 381.1(a)**

Since the Commission is already expecting to consider portfolio applications from the utilities to be filed on July 2, 2012, and pilot proposals from local government regional energy networks on July 16, 2012, as set forth in this

ruling, it seems most convenient for any CCA seeking energy efficiency program funding approval from the Commission under the terms of § 381.1(a) to follow the procedures laid out for local government REN proposals in this ruling. This will allow concurrent consideration of any CCA proposals alongside utility and local government REN proposals, so that the Commission may evaluate any coordination, overlap, or gap issues that may arise, especially related to the § 381.1(a)(3) requirements to “accommodate the need for broader statewide or regional programs.”

Thus, any CCA wishing to make application for 2013-2014 energy efficiency program funding under § 381.1(a) should follow the procedures in Section 3 (and Ordering Paragraph 1) of this ruling.

**B. CCA Elections Under § 381.1 (e) and (f)**

CCAs are also eligible to elect to administer energy efficiency funding under § 381.1 (e) and (f). Should any CCA wish to make a filing for Commission certification of its plan (approved by its board) under these subsections in 2012 for 2012 or 2013-2014 funding, the CCA shall send its request via letter to the Director of the Energy Division and serve a copy of the letter on the service list, the assigned Commissioner, and the assigned administrative law judge for this proceeding. The Energy Division will then evaluate the CCA’s plan against the criteria in § 381.1(f) and prepare a Resolution for Commission consideration.

**IT IS RULED that:**

1. A local government entity that wishes to present a local government regional energy network pilot proposal for Commission consideration shall take the following steps:
  - a) Prepare a document that follows, to the extent applicable, the guidance circulated by Energy Division for the

2013-2014 applications and located at the following web site:

<http://eega.cpuc.ca.gov/StandardTables/GuidanceDocument.aspx> (select "2013-2014 Guidance" as the Document Type).

- b) Title the document "Motion for consideration of [Regional Energy Networks or Program Name]."
- c) File the Motion in the Application proceeding(s) for the applicable utility's 2013-2014 energy efficiency program portfolios. The Commission anticipates issuing a ruling consolidating the utility applications shortly after their filing.
- d) File the Motion no later than July 16, 2012 and serve it on the service list of this proceeding (Rulemaking (R.) 09-11-014) and the 2013-2014 energy efficiency portfolio Application proceeding(s).
- e) The filing of such a Motion will automatically confer party status in the Application dockets on the party making the filing, as long as the filing is made on or before the due date. Otherwise, normal Commission rules apply.
- f) In the Motion containing the proposal, the proponent(s) should, to the extent possible, indicate identified areas where the proposal overlaps with programs and/or measures proposed in the investor-owned utilities' portfolio applications.

2. Any party interested in commenting on the (1) the proposed funding formula and definitions of terms for CCA energy efficiency program administration elected under § 381.1(a) and/or (e) and (f); and/or (2) appropriate procedures for community choice aggregators to file energy efficiency program proposals for 2015 and beyond, may file and serve comments on the suggestions in Section 4 of this ruling by no later than August 10, 2012, and reply comments by August 17, 2012.

