FILED
03-07-12
04:59 PM

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 SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE REGARDING EPIC RD&D PROGRAM

March 7, 2012

Steven Schiller
Board Chair
California Energy Efficiency Industry Council
436 14th Street, Suite 1123
Oakland, CA 94612
(916) 390-6413
sschiller@efficiencycouncil.org

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 SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE REGARDING EPIC RD&D PROGRAM

I. Introduction and Summary

The California Energy Efficiency Industry Council (Efficiency Council) respectfully submits these comments in response to Commission President Peevey and Administrative Law Judge Fitch's "Phase 2 Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge" (AC/ALJ Ruling), dated February 10, 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. ALJ Fitch, in an email to the service list dated February 24, granted an extension of the opening comment deadline to March 7, 2012.

The AC/ALJ Ruling opens Phase 2 of the proceeding and sets a schedule to address detailed program design, oversight, and administrative questions related to how the Electric Program Investment Charge (EPIC) program funding, established in Phase 1 through D.11-12-035, will be allocated and for what specific purposes. This ruling also presents as an attachment the EPIC Staff Proposal with recommendations for research, development and deployment (RD&D) and renewables programs and requests comment.

The Efficiency Council is a statewide trade association of non-utility companies that provide energy efficiency services and products in California.[1] Our member businesses, now numbering over 60, 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 long-term economic growth, stable and reasonably priced energy infrastructures, and environmental improvement.

Due to our members' unique interest and expertise in the significant benefits generated by the state's energy RD&D programs focused on efficiency, the Efficiency Council's involvement in this proceeding is focused on the RD&D program, defined by the Staff Proposal as the Applied Research and Development and Technology Demonstration components of the proposed EPIC program. We do not comment specifically on the renewable energy portions of the Staff Proposal, although we recognize that there are also both short- and long-term energy efficiency benefits created by some of the renewable energy programs that were previously funded through the public goods charge (PGC).

The Efficiency Council commends the Commission for acting swiftly to establish funding for EPIC through D.11-12-035 to help avoid any gap in electric RD&D funding when the PGC expired. We urge the Commission to continue to move quickly to establish the details of the EPIC program to ensure that the state's public electric energy RD&D momentum is not lost.

Overall, the Efficiency Council generally supports the Staff Proposal's recommendations for RD&D. The proposal recognizes that publicly funded and administered RD&D is necessary to meet California's aggressive energy policy goals for a clean, affordable, and efficient energy system. In particular, investments in the development of the next generation of energy efficiency are central to meeting the state's ambitious energy and climate goals. The Efficiency Council

[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.

offers the following high-level policy comments and important considerations the Commission should take into account as it further refines the guidance for the EPIC program. As requested in the AC/ALJ Ruling (p. 3), the Efficiency Council's comments are organized according to the general outline areas of the Staff Proposal. Our comments are summarized as follows:

1. ***Policy Case***: The Efficiency Council strongly supports the Staff Proposal's assessment that continued ratepayer support for energy RD&D activities is both warranted and necessary.
2. ***Guiding Principles***: The Efficiency Council generally supports the suggested guiding principles for EPIC and urges the Commission to consider energy efficiency RD&D activities first, as energy efficiency is the state's top priority resource. Also, while we support the recognition of the electricity "value chain", we also suggest in the development of RD&D strategies, the recognition of the end-use efficiency "market chain" which engages a wide range of actors in the delivery of efficiency services and products to the marketplace.
3. ***Investment Areas***: The Efficiency Council supports funding of energy efficiency RD&D activities among the suggested areas for investment with EPIC funds, and we urge the Commission to ensure that all types of energy efficiency innovations – technologies as well as strategies or methods of approach – are considered eligible for funding. We also suggest that Market Facilitation, Local Agency Assistance and Regulatory Streamlining specifically allow for activities associated with demand side management, as well as renewables.
4. ***Funding Levels***: The Efficiency Council strongly supports the Commission's efforts to maintain EPIC electric RD&D funding at levels similar to previous PIER funding, but we also urge the Commission to consider increasing RD&D funding in the future. Furthermore, the Efficiency Council urges the Commission to address the current temporary status of EPIC funding and ensure continued RD&D funding beyond 2012.
5. ***Fund Shifting***: The Efficiency Council strongly supports the need for flexibility in allowing the administrator to shift funds and make adjustments as necessary.
6. ***Utility Funding Responsibility***: The Efficiency Council supports maintaining the allocation of EPIC funding responsibility by utility in the same proportion as past PGC collections.
7. ***Investment Plan Process and Schedule***: The Efficiency Council generally supports the proposed investment plan process and schedule. In addition, we urge the Commission to ensure that any to-be-developed metrics for evaluation of program success includes tolerance for failure of research projects.
8. ***Governance Issues***: The Efficiency Council supports the administration of EPIC by the CEC with additional policy oversight by the CPUC to the extent required. Any evaluation metrics must include understanding of and expectations for failure in RD&D projects; less the investments become too risk adverse. We also support minimal administrative burden in order to promote the nature of applied research which to achieve results requires flexibility for change.
9. ***Stakeholder Consultation***: The Efficiency Council supports the recommendation for regular and informal stakeholder consultation throughout the development of investment plans, their implementation, and any other aspect of the RD&D program.

10. ***Funding Flow***: The Efficiency Council supports any funding flow model that helps to prevent the repurposing of funds to unrelated purposes.
11. ***Coordination with Utility Activities***: The Efficiency Council supports improved coordination between statewide public RD&D activities and IOU-administered activities also underway to support demand side management portfolios.

II. Discussion

1. ***Policy Case:*** **The Efficiency Council strongly supports the Staff Proposal's assessment that continued ratepayer support for energy RD&D activities is both warranted and necessary.**

The Efficiency Council strongly supports the Staff Proposal's recognition of the importance of a state-funded and administered RD&D program, the absence of which would create "a significant policy gap, which, if left unfulfilled, will undermine California's ability to meet its near- and longer-term energy policy objectives." (p. 9) The Staff Proposal lays out a compelling case for continued public investment in RD&D (p. 10) that can be echoed by the experiences of energy efficiency industry. The funding of public research for energy efficiency products and approaches is a proven smart investment for accelerating the pipeline of innovative and cost-effective efficiency options. It is also a key component of the state's commitment to prioritizing energy efficiency in the loading order. Private-sector and other government policies to encourage fundamental research, development, and deployment have frequently followed state RD&D funding, resulting in cost-effective energy efficiency resources, lower customer energy bills, and many successful California companies that support the state's economy and that create jobs. Market-transforming innovations and developments are only possible with long-term and sustained support for RD&D.

2. ***Guiding Principles:*** **The Efficiency Council generally supports the suggested guiding principles for EPIC and urges the Commission to consider energy efficiency RD&D activities first, as energy efficiency is the state's top priority resource. Also, while we support the recognition of the electricity value chain, we also suggest the**

The Efficiency Council generally supports the key principles suggested in the Staff Proposal "with which any ratepayer-supported program should be consistent and/or specifically advance." (p. 14-16) These guiding principles include ratepayer and societal benefits; AB 32 and Executive Order S-3-05; the loading order; safe, reliable, and affordable energy services; economic development; and efficient use of ratepayer monies.

The Staff Proposal suggests that EPIC activities should be able to be mapped to different elements of the electricity value chain (p. 15) (although, we note that the fuel portion of the value chain is not included). Rather than listing Demand Side Management as last in this list, we urge the Commission to consider these areas first, as energy efficiency and demand side management across all customer segments are the state's top priority loading order energy resources and whose benefits flow to reductions in costs and capacity requirements in all other elements of the value chain.

We also suggest that the diverse nature of demand side management, applied research and development strategies should be recognized in the end-use efficiency market chain as it engages a wide range of actors in the delivery of efficiency services and products to the marketplace. Successful leverage of the marketplace to include new technologies, strategies, etc., requires an understanding of how efficiency products and services are delivered and how the results of the EPIC program will successfully enter the market.

3. ***Investment Areas:*** **The Efficiency Council supports funding of energy efficiency RD&D activities among the suggested areas for investment with EPIC funds, and we urge the Commission to ensure that all types of energy efficiency innovations – technologies as well as strategies or methods of approach – are considered eligible for funding. We also suggest that Market Facilitation, Local Agency Assistance and Regulatory Streamlining specifically allow for activities associated with demand side management as well as renewables.**

The Efficiency Council supports energy efficiency as one of the investment areas for EPIC RD&D funding, in applied research and development as well as technology demonstration. These areas of investment support for energy efficiency are consistent with current and recent state RD&D activities conducted through the Public Interest Energy Research (PIER) program overseen by the California Energy Commission. Energy efficiency must continue to be among the areas of focus for RD&D as it has an established place at the top of the loading order and will need to rely in part on publicly-funded RD&D-spurred innovations in technology and strategy in order to meet state energy policy goals. In particular, the Efficiency Council strongly supports 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" (p. 16) as one of the recommended activities for the proposed EPIC program. However, the Staff Proposal's additional suggestion for activities to "develop and demonstrate emerging and renewable energy technologies" seems too narrowly focused on renewable energy, to the exclusion of energy efficiency. Energy efficiency should also be a key area for development and demonstration activities.

Similarly the topic areas of Market Facilitation (p. 28) and, Local Agency Assistance and Regulatory Streamlining (p. 30) only address topics related to renewable energy. End-use efficiency and demand side management also face market (e.g., landlord tenant issues) and regulatory barriers (e.g. code requirements for retrofit markets – AB758, and code enforcement). Research and support for these topic areas, particularly associated with regulation, are critical to advancing efficiency as first in the loading order. Therefore, we would suggest expanding the sentence in the on page 29 from:

"….funding should be allocated to support analytics around the state of the energy market, assessments of policy impacts and opportunities, as well as support for ongoing activities specifically related to the regulatory infrastructure required for the RPS program for IOUs."

to

"…funding should be allocated to support analytics around the state of the energy market, assessments of policy impacts and opportunities, as well as support for ongoing activities specifically related to the regulatory infrastructure required for the RPS program for IOUs as well as the implementation of demand side management activities in new construction and existing buildings."

The Efficiency Council recognizes that the Staff Proposal understandably at this time does not offer specific recommendations on the types of research that should be pursued (p. 19) nor does it identify specific areas or technologies to be targeted for demonstration (p. 22), instead leaving details to be determined later consistent with an investment plan and appropriate selection process. However, we urge the Commission as it continues to establish EPIC program guidance to ensure that all types of energy efficiency innovations – in processes, methods, and information, in addition to technology – remain an eligible and needed area of EPIC RD&D funding, needed to feed the pipeline of new energy efficiency technologies and strategies.

4. ***Funding Levels:*** **The Efficiency Council strongly supports the Commission's efforts to maintain EPIC electric RD&D funding at levels similar to previous PIER funding, but we also urge the Commission to consider increasing RD&D funding in the future. Furthermore, the Efficiency Council urges the Commission to address the current temporary status of EPIC funding and ensure continued RD&D funding beyond 2012.**

The Efficiency Council supports the Staff Proposal's recommendation to maintain EPIC RD&D funding, in particular in the areas of applied research and development as well as technology demonstration, at levels similar to past funding for the PIER program (p. 18). The Efficiency Council appreciates staff's consideration of the importance of ensuring stability and continuity in funding levels, as it is essential to the success of RD&D programs which are necessary to continuously help feed the efficiency pipeline with energy-saving innovations. The Staff Proposal's annual funding recommendations, beginning in year 2012 and ending at the end of 2020, of $55 million proposed for applied research and development (p. 19) and $50 million for technology demonstration (p. 22) will provide support consistent with past years.

However, the Efficiency Council also urges the Commission to consider ramping up critical RD&D investments in future years. As the Staff Proposal itself notes, overall past PIER funding levels "are not unreasonable, and, in fact, could be viewed as a conservative amount" and "even with the amounts recommended [for EPIC funding]…, electric industry R&D efforts using utility ratepayer funding would remain significantly underfunded." (p. 17) Thus, although the Efficiency Council supports the Staff proposal to readjust funding amounts at the time of the development of each three-year investment plan cycle (p. 33), we do not necessarily support that any funding increase be limited to increases in the consumer price index as suggested.

Furthermore, the EPIC surcharge established in D.11-12-035 is intended only to be collected on an interim basis in 2012.[2] The Staff Proposal makes no explicit mention of recommendations for continuing the EPIC on a more permanent basis past 2012. Thus, the Efficiency Council urges the Commission to ensure it establishes more permanent funding for the EPIC in its Phase 2 decision in this proceeding.

5. ***Fund Shifting:*** **The Efficiency Council strongly supports the need for flexibility in allowing the administrator to shift funds and make adjustments as necessary.**

The Efficiency Council supports the Staff Proposal's recognition of "the need for flexibility to enable the program to adjust to changing circumstances and priorities." (p. 33) Although the Efficiency Council offers no comment on the specific proposed fund shifting percentage limits and rules at this time, we generally support the Staff Proposal recommendation to allow the administrator to shift funds within an investment cycle, subject to predetermined limits and rules, in order to make adjustments when necessary to increase the overall success of the program. However, we believe that allowing the administrators to "shift as much as 10% of the budget of any of the funded programmatic area to another funded area" is too limiting and that a higher percentage and shifting between any area within 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 what has been learned during each phase of the RD&D.

6. ***Utility Funding Responsibility:*** **The Efficiency Council supports maintaining the allocation of EPIC funding responsibility by utility in the same proportion as past PGC collections.**

[2] Ordering Paragraph 2 of D.11-12-035 states: "The surcharges shall be imposed on an interim basis, subject to refund, until the Commission issues its final decision at the conclusion of Phase 2 of this rulemaking, or until January 1, 2013 (whichever comes first)."

The Efficiency Council supports the Staff Proposal recommendation that individual utility responsibility for collecting EPIC funding should remain proportional to past Public Goods Charge (PGC) collections (p. 33).

7. ***Investment Plan Process and Schedule:*** **The Efficiency Council generally supports the proposed investment plan process and schedule. In addition, we urge the Commission to ensure that any to-be-developed metrics for evaluation of program success includes tolerance for failure of research projects.**

The Efficiency Council generally supports the Staff Proposal's schedule and plan for investment and implementation. The Efficiency Council appreciates that Staff has declined to prescribe a specific set of RD&D issues to be addressed, with the recognition of the need to maintain program flexibility and that research priorities and needs of the state may change over time. (p. 34) We encourage the Commission to continue this flexibility perspective moving forward.

We also support the Staff Proposal's recommendation that the administrator has the responsibility to develop a triennial investment plan, to be approved by the Commission, with the administrator having discretion in establishing priorities for investment within the overall areas of policy support areas and funding established by the Commission. (p. 34) A three-year (at minimum) investment planning cycle allows a longer-term time horizon that can still incorporate changes in the marketplace and the associated needed solutions that are needed for effective RD&D. The Staff Proposal's suggested schedule for EPIC program approval activities (p. 36) seems generally reasonable, particularly to allow adequate planning along similar planning schedules anticipated for CPUC-overseen energy efficiency programs, assuming that the Commission ensure that the energy portfolio cycles' timing does not slip as it has in future years.

The Efficiency Council also supports that the investment plan explain coordination with other RD&D activities, including by the utilities and U.S. Department of Energy (p. 34); include evaluation criteria for screening and selecting projects (p. 35); and include key metrics against which the program will be evaluated (p. 35). The Efficiency Council encourages the Commission to ensure that evaluation metrics are developed that recognize that individual project failures are normal and acceptable part of cutting-edge research. Any RD&D program must include research risk management procedures so that the overall benefits of RD&D are evaluated and are not necessarily required for each individual project.

In addition, long-term funding is critical for the success of RD&D. The Efficiency Council urges the Commission to explicitly address the longer-term plan for EPIC funding, as collections to fund the program are currently designed as a temporary surcharge through the end of 2012. The Efficiency Council appreciates the Staff Proposal's detailed schedule for three triennial investment plans through 2020, but the Staff Proposal does not explicitly identify the need for the Commission to authorize EPIC collections beyond 2012. The identification of a stable funding source is critical for the RD&D program's sustainability and long-term success. The Efficiency Council urges the Commission to establish the longer-term collection of EPIC funds in its Phase 2 decision in this proceeding.

8. ***Governance Issues:*** **The Efficiency Council supports the administration of EPIC by the CEC with additional policy oversight by the CPUC to the extent required. Any evaluation metrics must include understanding of, and expectations for, failure in RD&D projects; less the investments become too risk adverse. We also support minimal administrative burden in order to promote the nature of applied research which to achieve results requires flexibility for change,**

The Efficiency Council is very supportive of the proposed continuation of administration of the EPIC RD&D program by the California Energy Commission (CEC), with policy oversight by the CPUC. The proposed administrative model is the natural structure for the EPIC RD&D program, as it takes advantage of the CEC's existing RD&D infrastructure, staff, and expertise established at the agency over many years, while still allowing room for improvements over past practices. The Commissioners and management of the CEC have also made a commitment to effective administration of the activity. We are however, less clear on the role of the CPUC such that it requires an additional $700,000 per year and would suggest that the Energy Division, as would be expected of the CEC, explain how such funds will be utilized in support of EPIC and its goals.

The Efficiency Council generally supports the Staff Proposal's recommended metrics for the EPIC program (p. 37-38), but again stresses that any "quantification of estimated benefits to ratepayers and the state" (p. 38) for the RD&D program must include tolerance for failure. For a successful RD&D program, the state must set broad goals and then allow for a program that is managed as a research program, not a pencil procurement program. Success is defined differently for RD&D than for other conventional procurement investments. While it is understandably difficult to appreciate how public money can be spent on projects that did not result in successful technologies, it is critical to understand that any RD&D program that always insists on "success" will not result in new innovation but only a rehashing of past ideas; failure is the process by which success is eventually achieved.

The Efficiency Council urges both the CPUC and CEC, as they develop metrics for evaluating success and failure of the RD&D program, to view unsuccessful projects and technology developments as an acceptable component of an effective RD&D portfolio. The lessons learned from research failures, especially in the data sharing environment that is encouraged by state-funded RD&D, are important to informing both the long-term goals and next steps in near-term research. The allowance for project failures as an acceptable risk in the program structure is required to prevent short-term reactions that could derail long-term research goals. In summary, while the Council has appreciation for the proper oversight of the use of public funds, a risk-adverse research strategy, combined with an overly burdensome administrative and contractual process that comes with high amounts of risk aversion, will not result in a successful EPIC program.

9. ***Stakeholder Consultation*: The Efficiency Council supports the recommendation for regular and informal stakeholder consultation throughout the development of investment plans, their implementation, and any other aspect of the RD&D program. In particular, the Efficiency Council urges the Commission to recognize the benefit of consultation with, and inclusion of, businesses in the advisory groups as they are expected to use the results of the investment plans.**

Stakeholder involvement is central to the success of the proposed EPIC program and the development of the triennial investment plans, and the Efficiency Council supports the Staff Proposal recommendation for significant opportunities for stakeholder engagement and consultation throughout the process. While the Efficiency Council recognizes that the list of key stakeholders (p. 44) may not be intended to be exhaustive, we would like to suggest that the industry perspective will be invaluable in the development of investment plans. This is the industry that must leverage and apply the results of the EPIC program in order for program to be successful in reaching its goals. The energy efficiency industry cannot grow without continual innovation spurred by RD&D, and efficiency businesses operating in the field can provide valuable insight into the type of RD&D needed.

The Efficiency Council supports the Staff Proposal's recommendation that neither the CPUC nor CEC should delegate decision making to a stakeholder or advisory body (p. 44-45). We also support the various suggested regular public opportunities for stakeholder input, advice, and feedback to the administrator throughout the development and implementation of the RD&D program.

10. ***Funding Flow:*** **The Efficiency Council supports any funding flow model that helps to prevent the repurposing of funds to unrelated purposes.**

The Efficiency Council does not provide specific comment on either of the Staff Proposal's alternative models for funding flow (p. 45). However, we support the Staff Proposal's objective to "minimize the risk of repurposing of the funds that will be administered by the CEC" (p. 46) and support the development of any mechanism that helps prevent the repurposing of funds away from its intended purposes of supporting RD&D.

11. ***Coordination with Utility Activities:*** **The Efficiency Council supports improved coordination between statewide public RD&D activities and IOU-administered activities also underway to support demand side management portfolios.**

The Efficiency Council acknowledges, as does the Staff Proposal, that there are some areas of RD&D for energy efficiency that are already funded separately from statewide RD&D funding streams and administered by the IOUs, such as emerging technologies. We support the continuation of funding for the utilities' energy efficiency emerging technology programs and agree that these activities are "already well coordinated and integrated within the energy efficiency policy space, including CEC and IOU efforts related to codes and standards" (p. 49). However, in order to further improve coordination with statewide RD&D efforts, we support the Staff Proposal's recommendation to require IOUs to also submit investment plans for their activities on the same schedule as for the EPIC program and also similarly require substantial stakeholder involvement in the development of those plans (p. 48).

III. Conclusion

The Efficiency Council appreciates the opportunity to offer these comments on the EPIC Staff Proposal in the areas relevant to continued public RD&D, in particular for energy efficiency advancements. The Efficiency Council believes it is critical to maintain stability in, if not increased, funding for RD&D programs that include 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 establish the details of the EPIC program to ensure that the state's public electric 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: March 7, 2012

Respectfully submitted,

Steven R. Schiller
Board Chair
California Energy Efficiency Industry Council
436 14th Street, Suite 1123
Oakland, CA 94612
(916) 390-6413
sschiller@efficiencycouncil.org