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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Concerning
Energy Efficiency Rolling Portfolios,
Policies, Programs, Evaluation, and Related
Issues.

Rulemaking 13-11-005
(Filed November 14, 2013)

**ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMORANDUM
REGARDING 2015 PORTFOLIOS (PHASE I OF RULEMAKING 13-11-005)**

1. Introduction

This ruling and scoping memo establishes Phase I of Rulemaking (R.)13-11-005 and its scope, pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure.

Rulemaking (R.) 13-11-005 may radically change the structure and budget cycles of energy efficiency programs by moving from triennial energy efficiency portfolio cycles to "Rolling Portfolios."¹ In R.13-11-005, the Commission recognized that "review and analysis of 'Rolling Portfolios' will not be complete

¹ A "Rolling Portfolio," as defined in R.13-11-005, is a portfolio of energy efficiency programs that has the following characteristics:

1. Commission-approved funding for a long term (e.g., 10 years);
2. Administrators periodically adjust portfolios as circumstances warrant, rather than filing entire portfolios for Commission review on a fixed schedule; and,
3. The Commission renews funding well prior to the end of the funding period.

in time for the 2015 budget cycle.” The Commission accordingly established a process for ensuring that 2015 funding will be in place while it resolves “Rolling Portfolio” implementation issues. The Commission divided R.13-11-005 into three phases, with review of 2015 portfolios within the preliminary scope of the first phase.

Phase I will establish 2015 portfolios and funding. We will address the work contained within Phase I of R.13-11-005 on an expedited schedule. This expedited review will “clear the decks” for the more substantial work envisioned for Phase II of this proceeding, which will primarily concentrate on “Rolling Portfolios” and other programmatic issues.

Expedited disposition of Phase I necessitates a ruthless pruning of issues in this phase of the proceeding. It also necessitates a near-complete focus on the issues that are within Phase I’s scope. Unfortunately, this means deferring some of the changes to portfolios that I and others might have wished to see begin in 2015. Parties should rest assured that the Commission is fully committed to taking up the broader re-examination that R.13-11-005 preliminarily scoped in Phases II and III of this proceeding as soon as feasible. However, it is critical to maintain near-term market stability and efficiency savings predictability while we contemplate broader long-term changes.

R.13-11-005 generally contemplates continuation through 2015 of the energy efficiency portfolios approved for 2013-14. This ruling provides guidance on the structure of EE portfolios for 2015, and on the format administrators should use when filing for approval of their 2015 portfolios. The assigned administrative law judge will issue a ruling that contains new savings goals for 2015 portfolios. I anticipate a Commission decision more formally adopting 2015 goals and funding, which are at the core of this phase of R.13-11-005, to be

ready for consideration at the Commission's regularly scheduled May 15, 2014 business meeting.

2. Categorization of Phase I, Designation of Presiding Officer, and Notices of Intervenor Compensation

I confirm the preliminary categorization of this proceeding as ratesetting. Consistent with R.13-11-005, evidentiary hearings will not be needed in Phase I. We will revisit the categorization and hearing need determinations, if appropriate, in subsequent phases of this proceeding.

Mark J. Ferron is the assigned Commissioner and Todd O. Edmister is the assigned Administrative Law Judge in this proceeding. Pursuant to Rule 13.2(b), the assigned Administrative Law Judge is the Presiding Officer in this ratesetting proceeding.

Notices of Intent to seek intervenor compensation were due 30 days after the December 11, 2013 prehearing conference, per Rule 17.1. That was January 10, 2014.

3. Scope of Phase I

3.1. Savings goals for 2015 portfolios

Savings goals for 2015 are within the scope of this proceeding.

Public Utilities Code Sections 454.55 and 454.56 require the Commission, in consultation with the California Energy Commission (CEC), to identify potentially achievable cost-effective electricity and natural gas efficiency savings and establish efficiency targets for electrical or gas corporations to achieve. The current utility-specific energy savings goals, established in Decision (D.) 12-05-015, extend only through 2014. The Commission needs to adopt goals for the 2015 period.

Commission Staff has contracted with Navigant Consulting (Navigant) to conduct an EE potentials and goals update study for 2015. Commission staff is vetting the study through the Demand Analysis Working Group, a collaborative stakeholder forum established in 2009 by the CEC and the Commission to address technical issues associated with aligning CEC demand forecasting and the Commission's EE goals modeling efforts.

Navigant completed a draft 2015 potentials and goals update study (the "draft study") in late 2013. The draft study provides the technical analysis assessing the cost-effective energy savings potential available in the state's building stock, commercial sector, industrial sector, and agricultural sector. An Administrative Law Judge (ALJ) ruling dated November 26, 2013 put the draft study out for public comment, along with a set of proposed EE goals for 2015 that Commission staff had developed. The Commission received comments on the draft study on December 20, 2013.

Taking into consideration comments received on the draft study, the assigned administrative law judge will issue a ruling on the potentials and goals study and associated savings goals for 2015. The Commission will adopt the final potentials and goals study and savings goals in a decision on Phase I of this proceeding.

3.2. Portfolio changes for 2015 versus 2014

3.2.1. Programmatic Guidance for 2015 Portfolios

3.2.1.1 Programmatic Changes Administrators Are to Include

Rulemaking (R.) 13-11-015 anticipated that 2015 portfolios would depart from 2014 portfolios to include the following:

1. Changes to reflect our adoption of an updated energy efficiency goals and potentials study, and resulting energy efficiency goals;
2. Changes to increase programs that target particular regions or customer groups [e.g., programs addressing the decommissioning of the San Onofre Nuclear Generating Station (SONGS)];
3. Changes to address Proposition 39.²

These changes are exemplary and not exclusive. Administrators shall propose these and other incremental changes as needed in 2015 to achieve goals (e.g., piloting a program for “bottoming cycle” combined heat and power with no supplemental fuel requirements as an EE portfolio eligible measure).

Changes are, of course, bounded by the general guidance here and in R.13-11-005 that changes are to be incremental to the existing 2013-14 portfolio.

In contemplating program changes, we encourage administrators to think creatively and to use existing resources to the extent possible. For example, if an administrator wishes to propose a new program which targets transmission constrained areas, the administrator should indicate how it might leverage existing marketing and outreach dollars. Alternatively or additionally, administrators might ask that we use a “locational premium” when calculating the avoided cost for generation capacity, effectively lowering the cost effectiveness bar for peak-reducing EE measures in transmission-constrained areas. Administrators might also identify, with Commission staff input,

² Proposition 39 increased state corporate tax revenues and required that half of these revenues for a five-year period be used for energy efficiency and alternative energy projects. The Governor designated all energy-related Proposition 39 funds to schools and community colleges in 2013 -2014 and for the following four years.

measures and/or projects in transmission constrained areas that are good candidates for the alternative baseline treatment described in Ordering Paragraph 151 of D.12-05-015. Program choice and funding in the SONGs context will need to be coordinated with activities in proceeding Rulemaking (R.) 12-03-014.³

Proposition 39 programs included in the 2015 Funding Proposals might variously: (1) offer incentives for above-code component replacement that are greater than traditional incentive levels; and (2) identify school equipment that is a good candidate for the alternative baseline treatment described in Ordering Paragraph 151 of D.12-05-015.

Changes to the Energy Upgrade California Home Upgrade Program bear consideration as well. The Commission gave administrators guidance on changes to make to the Home Upgrade Program when the Commission established the 2013-14 portfolio. Administrators should with those changes into 2015, and continue to make improvements in multiple areas. These areas include:

1. New strategies for savings from plug loads such as appliances and lighting;
2. Use and distribution to contractors of additional software modeling tools;
3. Streamlining of reporting requirements;
4. Targeting and outreach to specialty contractors;
5. Reconfiguration of how the point/rebate structure works.

³ Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.

Administrators are already deploying these and other changes, and I encourage continued emphasis on improving the Home Upgrade Program. Since Energy Upgrade California Home Upgrade Program is holistic in nature and represents a critical component of the portfolio, Commission Staff may hold a workshop to help focus suggestions and areas of improvement.

To reiterate, the list of changes for 2015 called out in this ruling is exemplary and not exclusive.

There are also a few specific types of changes that administrators should not include in funding applications for 2015. I discuss these next.

3.2.1.2 Programmatic Changes Administrators Are to Exclude

Administrators may have to achieve greater savings in 2015 than they did in 2014. I want administrators to generally have the ability to expand existing programs or propose new programs as needed to achieve goals. Accordingly, I do not want to be particularly prescriptive here.

That said, the 2015 portfolio is not the place to expand programs that are currently in the pilot stage. I speak here in particular to possible expansion of “to-code” programs, as several parties have proposed. Where the Commission has already approved pilots, the Commission should have an opportunity to analyze data from the pilots before administrators start additional pilots or expand from a pilot to a full-scale program.

The Commission included expansion of to-code programs generally within the preliminary scope of Phase III of this rulemaking, and I do not see an immediate need to address the issues associated with to-code programs, *per se*, until then. In the meantime, I encourage administrators to work within the framework for alternative baseline treatment that the Commission established in Ordering Paragraph 151 of D.12-05-015 for measures and projects that receive

“to-and-through-code” program savings credit, particularly for locational and Proposition 39 related programs.

3.2.2. Contingency Planning Against a Delay in Funding for Post-2015 Portfolios

Steps to take in the event that the Commission has not timely approved programs for post-2015 are within the scope of this proceeding.

The 2015 portfolios may, in at least one respect, be the first of the new “Rolling Portfolio” era. Administrators have historically not signed contracts beyond the Commission-authorized funding period (i.e., portfolio cycle). This has resulted in hard stops for all efficiency activity at the end of each cycle or bridge year. R.13-11-005 lays out why this is undesirable. While Phase II will more broadly consider these issues, in the scope of Phase I should include any hand-off issues as needed. We will consider changes beginning in 2015 to address this problem as follows:

- (1) We will consider whether to continue 2015 programs and funding levels into 2016 and beyond until we give further guidance (e.g., in Phase II of this proceeding).
- (2) We will also consider authorizing administrators to enter into contracts that extend up to five years (e.g., 2015-2019, inclusive), until we give further guidance (e.g., in Phase II of this proceeding).
- (3) We will consider modifying Decision 09-09-047 as needed to carry forward previously-authorized programs and through a “gap” in authorization.
- (4) Contemplating any new studies or reports which would occur in 2015, for example workforce education and training recommendations.

3.2.3. What is the Appropriate Level of Funding for 2015 Portfolios?

The appropriate level of funding for 2015 portfolios is within the scope of this proceeding.⁴

Below, we give additional guidance to administrators on the format of submissions for 2015 funding to be considered in this proceeding. Consistent with prior practice, unspent and underspent funds from the 2013-14 cycle should carry forward into the 2015 program year. Funding requests should identify both total budget authorization, and specify which part of the budget request can be met using unspent or underspent funding.

I note that D.13-09-044 already extended the budget for the previously authorized EE Financing pilots. Administrators need not re-see authorization to carry forward that money.

3.2.4. Updates to Energy Savings Performance Incentive Inputs

Recalibration of the 2013-2014 Energy Savings Performance Incentive (ESPI) mechanism approved in D.13-09-023 and R.12-01-005 to account for changes in goals and in 2015 budgets is within the scope of this proceeding.

3.3 Filing Format for 2015 Portfolios

3.3.1 Filing Requirements Generally

Administrators are to file proposals in this proceeding (2015 funding proposals) for funding through 2015 of slightly modified versions of their current portfolios. The 2015 portfolios will largely carry forward the programs and

⁴ The scope of this issue includes the use of unspent and/or unencumbered funds from prior budget cycles in 2015 portfolios.

budgets of the 2013-14 portfolios. They will also incorporate (or exclude, as appropriate) substantive portfolio changes as discussed above.

The 2015 funding proposals shall, at minimum, include:

- Program (and sub-program) budget requests, including total portfolio budget augmentation (or reduction), versus 2014, if any;
- Program (and sub-program) budget and savings tables (a.k.a. “Placemats”); and
- A cost-effectiveness showing, as detailed below.

Administrators are directed to work with Commission staff to determine the filing format.

3.3.2 Cost Effectiveness Showing

3.3.2.1 Program Cost Effectiveness Showing

For the program cost-effectiveness showing, administrators are to file and “E3 cost-effectiveness calculator” for each *program*. Cost-effectiveness calculator submissions should be consistent with the budget and savings template submissions.

The program and portfolio cost effectiveness calculators should contain only major contributing measures/offerings/estimated activities.

Administrators should not attempt to cover all measures, due to the time required to prepare detailed cost-effectiveness calculator estimates on a measure level. The Commission may require administrators to file measure-level cost effectiveness calculators in a subsequent compliance filing, but I decline to do so now here.

3.3.2.2 Portfolio Cost Effectiveness Showing

Administrators are also to file one “rolled up” cost-effectiveness calculator for the *full portfolio*. For the full portfolio cost-effectiveness showing, I expect administrators to work with Commission Staff to determine an appropriate method that balances the competing needs for speed and accuracy. If administrators request funding above 2014 levels, administrators should include sufficient “buffer” over and above minimum portfolio cost-effectiveness thresholds (which will not change from the levels set for 2013-14) to mitigate any risk of overestimation.

3.3.3 Program Implementation Plans Not Required Now

I do not find it necessary to require the administrators to file updated Program Implementation Plans (PIPs) with their 2015 funding proposals for existing programs, but sufficient detail should be provided for approvals of new or significantly augmented programs. For the majority of programs, which I contemplate will remain unchanged, administrators will make any PIP updates in compliance filings.

3.4. Intervenor Compensation for Work to Develop a Joint Proposal(s) for Phase II

R.13-11-005 set Phase II of this rulemaking to follow completion of Phase I. This ruling follows R.13-11-005’s serial approach to phasing. Parties should be focused on Phase I issues before we turn to Phase II issues.

I recognize, though, that there is value to limited work on Phase II prior to its formal commencement. R.13-11-005 included a fairly detailed preliminary scope for Phase II. R.13-11-005 also asked parties to prepare a proposal to resolve some or all Phase II issues as preliminarily scoped. Parties have been and are engaged in a collaborative effort to develop the joint proposal that R.13-11-005

requested, including some intervenors who in all likelihood will seek compensation through the Intervenor Compensation Program.⁵ I want to encourage parties to continue this collaborative effort informally during Phase I, as time permits. As part of that encouragement I want to offer some level of assurance that the Commission will not reject out-of-hand claims for intervenor compensation for work relating to this effort.

Section 1801 establishes a program of “compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers of participation or intervention in any proceeding of the commission.” Section 1801.3 provides additional gloss on the program. It provides for compensation “*formal* proceedings of the commission involving electric [and] gas [] utilities.”⁶ The purpose of the program is to “encourage the effective and efficient participation of all groups that have a stake in the public utility regulation process.”⁷

Work on the joint proposal that R.13-11-005 requested parties to develop is work in a “formal proceeding” of the Commission. Eligibility for compensation for that work will “encourage the effective and efficient participation” of intervenors in this proceeding. That I have not yet issued a Phase II scoping memo will not preclude eligibility for compensation for productive and necessary Phase II work that substantially assists the Commission in making its decision in this proceeding.

⁵ Section 1801 *et seq.*

⁶ Section 1801.3 (emphasis added).

⁷ Section 1801.3 (b).

Any claims for intervenor compensation will, of course, be subject to the usual requirements applicable to intervenor compensation claims. Claims must include enough information for the Commission to make the findings required by §§ 1801-1812.⁸ In particular, an intervenor seeking compensation for work on the joint proposal must clearly describe its unique contribution(s) to developing a proposal that helps to achieve the overarching process goals articulated in R.13-11-005. A claimant must also demonstrate reasonable collaboration with others to avoid duplication of effort. Claimed amounts must be reasonable. I expect parties to focus their time and attention primarily on Phase I issues for the next several months, and for any claims relating to work on Phase II issues during that time to be modest.

4. Issues Deferred to Subsequent Phases

4.1. Portfolio Review Groups

I expect to address the need for and role of portfolio review groups in Phase II of this proceeding. *See* R.13-11-005 (discussing collaborative processes for development of rolling portfolios). I expect at that time to take up as well the issue of eligibility for intervenor compensation for participation in review groups or some similar collaborative review process, should the Commission adopt such a process for energy efficiency.

⁸ *See generally* section 1802 (defining terms related eligibility for compensation) and section 1803 (limiting recovery to “reasonable” fees and costs, and requiring a claimant to show substantial contribution to a Commission decision, and to show hardship absent compensation).

4.2. Workforce Education and Training

R.13-11-005 says nothing about workforce education and training, *per se*. I do not take R.13-11-005's silence on issues relating to workforce education and training to exclude discussion of workforce education and training from the rulemaking's scope.

I expect to address workforce education and training issues in Phase III. I do not see a reason to take up issues related to workforce education and training and Phase I of this proceeding. Nor do I anticipate addressing such issues in Phase II, though this is something I will revisit when setting Phase II's scope. Having said this, I recognize that the Commission has requested for additional studies on this topic. Any findings from these studies during Phase I will not be rejected out of hand as being out of scope.

4.3. Ex Ante Update

For a new portfolio cycle, we would typically evaluate the *ex ante* values and methods in the Database for Energy Efficient Resources (DEER) and non-DEER workpapers to determine what should be updated and adopted for use in planning portfolios. An extensive update to the DEER or non-DEER workpapers values and methods is nearly certain to result in a material delay in approving 2015 portfolios. Accordingly, for 2015 portfolio planning and reporting, we will not perform an extensive update to DEER or non-DEER workpapers *ex ante* values and methods. Rather, we will limit 2015 portfolio *ex ante* updates to (1) those developed to reflect the 2014 code updates ordered by the Commission in D.12-05-015 (i.e., "DEER 2014" and non-DEER workpaper values and methods updated as required to utilize DEER values or methods) and (2) any *ex ante* values on the ESPI uncertain measure list for which the update will create enough certainty to remove the measure from that list. We will,

however, retain the adopted *ex ante* workpaper review process under which Commission staff may continue to select non-DEER workpapers for prospective review at a later date.

Additionally, to expedite filing of 2015 Funding Portfolios, administrators may use current non-DEER workpaper values adjusted to approximate the DEER 2014 values. Administrators are to document any such adjustments in their 2015 Funding Proposals. Estimates for any new measures and activities proposed for the 2015 portfolio not covered in DEER or existing non-DEER workpapers shall have workpapers submitted with the 2015 Funding Proposal.

The 2015 Funding Proposals' estimates of portfolio contributions attributable to custom projects and measures shall reflect Commission Staff's direction during the *ex ante* custom review process, as well as changes resulting from DEER 2014 and non-DEER workpapers method and value updates.

In sum, administrators shall use "DEER 2014" values and method [found at <http://www.deeresources.com> on the "DEER 2014 Code Update" page] in developing both deemed and custom aspects of their 2015 portfolios. Non-DEER workpaper values used in developing portfolios shall be values already approved by Commission Staff and adjusted using factors or other approximation method to account for DEER 2014. Non-DEER workpaper values used in developing portfolios shall be updated using "DEER 2014" values and methods at a later date and utilized in a future updated filing. Commission staff shall provide any updated values or methods for any measures expected to be moved off the ESPI uncertain measure list at the earliest time possible. If such updated methods and values for ESPI uncertain measure list items are made available, Administrators shall use them for purposes of developing 2015 portfolios in either the initial filing or the future updated filing depending upon

the timing of that information availability from staff. I expect that the Commission will use the future updated filing values as the *ex ante* values when reviewing 2015 performance for ESPI purposes, once the non-DEER value content has been reviewed and approved by Commission staff via the already adopted *ex ante* workpaper review process.

I note for parties my expectation that how to update *ex ante* values in a Rolling Portfolio context is going to be a key issue in Phase II.

5. Expansion of Third Party Solicitations (e.g., IDEA 365)

I expect that what to do with respect to third-party solicitations (e.g., IDEA 365) will be a Phase III issue. *See* R.13-11-005, p. 21 (preliminarily placing within Phase III's scope issues related to third parties, including third-party solicitations).

5.1. Changes to Budget Categories

Several parties proposed including changes to budget categories within Phase I's scope. I decline to do so. There is no pressing need to make changes to budget categories for 2015 portfolios. R.13-11-005 placed budget categories within Phase II's scope. I note as well that the OIR asks for more granular breakouts in budgeting, while parties are requesting that we consider allowing *less* granularity, in order to mitigate the impacts of the Commission's rules regulating moving funds from one budget category to another during a portfolio cycle. This is not something to take up on an expedited basis.

5.2. Whether 2015 Will be Combined With 2014 for Evaluation and Incentive Purposes

Several parties have asked that we take up now whether we will evaluate 2015 in conjunction with 2013-14, or as a stand-alone year. No party has explained how this relates to the immediate issue of putting funding in place for 2015. Accordingly, this is not an issue we need to take up now.

5.3. Safety Issues

The only safety issue we are aware of relating to energy efficiency is allegations of poor circuit box lockout practices by Heating Ventilation and Air Conditioning program implementers. Commission Staff are looking into this concern, and we do not see a need to place that review within Phase I of this proceeding at this time. With safety being a key priority, however, any safety concern which arises in the 2015 funding requests will be considered in scope.

6. Proposed Schedule

The following is the schedule for Phase I of this proceeding. Subsequent scoping memos will address Phase II and III of this proceeding. This proceeding has a large number of issues, many of which are exceedingly complex. It will involve a large number of parties. Accordingly, I am specifying that the entire proceeding will be completed in 24 months of this scoping memo's issuance, rather than the default 18 months.⁹

⁹ Cal. Pub. Util. Code § 1701.5 (b). "the commission may specify in a scoping memo a resolution date later than 18 months from the date the scoping memo is issued, if that scoping memo includes specific reasons for the necessity of a later date and the commissioner assigned to the case approves the date."

Date	Event
2/3/14	Ruling issues on goals and potentials
Week of 2/17/14	Workshop re administrator filings
3/3/14	Administrators file for 2015 funding
3/14/14	Comments on administrator filings
3/21/14	Reply comments on administrator filings
4/14/14	Anticipated PD on 2015 portfolio funding
5/15/14	Anticipated Commission vote on 2015 portfolio funding

The schedule rests on a number of predicates: (1) that administrators already have general guidance on what the 2015 portfolios should look like, and will get more detailed guidance in the scoping memo, so administrators can start preparing their filings well before the ACR on goals and potentials; (2) that most administrators have been involved in development of the goals and potentials study throughout this year, and so, again administrators need not wait for the ACR on goals and potentials to start preparing filings; and (3) that the changes from 2014 to 2015 portfolios will be modest. Should the schedule need revisions, the assigned administrative law judge or Commissioner will reevaluate the schedule and revise it as appropriate.

IT IS RULED that:

1. The scope of Phase I of this proceeding is established as described herein.
2. This proceeding will be completed within 24 months of the date of this Scoping Memo.

Dated January 22, 2014, at San Francisco, California.

/s/ MARK J. FERRON

Mark J. Ferron
Assigned Commissioner