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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 AND ADMINISTRATIVE LAW JUDGE'S  
RULING AND AMENDED SCOPING MEMORANDUM  
(REGARDING PHASE III OF R.13-11-005)**

**Summary**

This Scoping Memo and Ruling sets forth the category, issues, need for hearing, schedule, and other matters necessary to scope the remainder of Phase III of this proceeding, pursuant to Public Utilities Code Section 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure.<sup>1</sup>

In addition, this Ruling provides procedural direction for the filing of energy efficiency business plans by regional energy networks, as provided for in Decision (D.)16-08-019.

**1. Procedural History**

This rulemaking is the latest in a series of ongoing proceedings conducted by the Commission, providing a venue for policy changes and regulatory oversight associated with the energy efficiency programs of the large

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<sup>1</sup> California Code of Regulations, Title 20, Division 1, Chapter 1; hereinafter, Rule or Rules.

investor-owned electric and natural gas utilities, community choice aggregators (CCAs), and regional energy networks (RENs).

Phase I of this proceeding addressed 2015 funding and concluded with D. 14-10-046. The first portion of Phase II (Phase IIa) concluded by establishing the basic rules for a rolling portfolio for energy efficiency programs in D.15-10-028. Phases IIb and IIIa, covered by the scoping memo issued October 30, 2015, were just completed in D.16-08-019, which primarily gave guidance for the filing of the first business plans under the rolling portfolio framework, as well as the setting of baselines used to estimate energy savings.

## **2. Scope and Schedule**

This proceeding was already well underway when Senate Bill (SB) 350 (DeLeon, 2015) and Assembly Bill (AB) 802 (Williams, 2015) both became law, creating a significant impact on the Commission's oversight of energy efficiency programs and policy. The key provisions of SB 350 for energy efficiency include a goal of doubling the amount of energy efficiency savings in California by 2030, with emphasis on market transformation and pay-for-performance approaches, among other things. AB 802's provisions primarily affect the manner in which baselines are set for measuring energy savings towards goals. All of these topics were covered, to some degree, in D.16-08-019. However, two specific areas warrant additional policy development and more detailed work. These are:

1. Market transformation, as discussed in SB 350; and
2. Custom projects, particularly in the industrial sector, as discussed in D.16-08-019.

We provide additional detail on these items in Sections 2.1 and 2.2 below.

This proceeding will still be the ongoing venue for any policymaking related to energy efficiency, should additional priority issues emerge. These potential issues are listed in Section 2.3 below.

There are also a number of other topics where issues or portions of issues from prior phases of this proceeding, or even prior proceedings, remain unresolved or where there is on-going work. Section 2.4 below discusses these issues in more detail.

In addition, Pacific Gas and Electric (PG&E) on August 30, 2016 filed a petition to modify D.14-10-046 as it relates to the goal-setting and goal-crediting of energy efficient streetlights. That petition will be handled in this proceeding.

Finally, we are aware that there are significant provisions in the proposed settlement agreement recently filed by PG&E related to the proposed closure of the Diablo Canyon nuclear facility that implicate energy efficiency policy and programs. To the extent necessary, this proceeding will be the venue for coordination with that Application (A.) 16-08-006.

Generally speaking, we expect to conduct the remainder of Phase III of this proceeding over the next 12 to 18 months. After that time period, it is likely that the Commission will want to close this proceeding and initiate a new rulemaking, since it is expected by that time that the first energy efficiency rolling portfolio filings will have been approved (or modified), and the nature and structure of our regulatory oversight may shift at that time.

If there are any workshops held in this phase of the proceeding, notices of such workshops will be served on the service list of this proceeding and posted on the Commission's Daily Calendar to inform the public that a decisionmaker or an advisor may be present at those meetings or workshops. Parties shall check the Daily Calendar regularly for such notices.

## 2.1. Market Transformation

SB 350, in creating Public Utilities Code § 399.4(d), provides that:

The commission, in a new or existing proceeding, shall review and update its policies governing energy efficiency programs funded by utility customers to facilitate achieving the targets established pursuant to subdivision (c) of Section 25310 of the Public Resources Code [requiring the setting of goals to achieve a doubling of energy efficiency savings by 2030]. In updating its policies, the commission shall, at a minimum, do all of the following:

Authorize *market transformation* programs with appropriate levels of funding to achieve deeper energy efficiency savings. [*Emphasis added.*]

In order to comply with this requirement of SB 350 more fully, we anticipate taking several steps in this proceeding. We acknowledge that these will take place following the filing of the initial business plans anticipated on January 15, 2017 by the provisions of D.16-08-019, and may require further work in parallel with or after those business plans are evaluated.

We also acknowledge that all of this work will need to be coordinated closely with the work of the California Energy Commission (CEC), which is tasked with setting the goals to achieve the doubling of energy efficiency savings. The CEC is also leading the work on the Existing Buildings Action Plan. While many aspects of our energy efficiency policy work overlaps with CEC work, these two areas merit special attention and coordination in the context of market transformation. As the interaction in the work of the two agencies becomes more clear, we may need to adjust our schedule for work on market transformation.

D.16-08-019 also already required that all market transformation programs be handled in a statewide manner according to the framework set in the decision for those types of programs. However, completion of prior work on market

transformation by Commission staff and consultants to more precisely characterize and define market transformation programs may help further refine our efforts in this area.

We anticipate circulating for parties' comments a staff proposal or white paper recommending more specific market transformation program definitions and criteria. This work may also involve one or more workshops.

The scope of this work will include at least the following issues:

- Updating the Commission's adopted definition of "market transformation" and/or adopting a definition for "targeted market transformation initiative" or other terms;
- Reviewing evaluation, measurement, and verification (EM&V), ex ante savings estimation, and cost-effectiveness protocols for their suitability to market transformation;
- Reviewing the approach to baseline setting and calculating measure lifecycle benefits for market transformation;
- Providing Commission guidance on administrative or governance issues;
- Providing Commission guidance on budget levels and general priorities, activities, or criteria;
- Reviewing and updating key Strategic Plan market transformation goals;
- Assessing the appropriateness and structure of providing financial incentives to program administrators for conduct of market transformation initiatives, either through the Energy Savings Performance Incentive (ESPI) mechanism or another method;
- Assessing lessons learned from prior market transformation efforts, such as the development of market transformation indicators and the conduct of previous market effects studies;
- Reviewing the appropriate role for codes and standards and/or emerging technologies programs (or other programs such as workforce, education, and training programs) in market transformation; and

- Assessing the need for additional changes to the existing energy efficiency policy and accounting framework to support market transformation.

The anticipated procedural schedule for handling these market transformation issues is as follows:

Date	Event
February 2017	Ruling issued with a Commission Staff white paper or proposal regarding market transformation
Early March 2017	Workshop on market transformation
End of March 2017	Comments due on staff white paper or proposal on market transformation
Early April 2017	Reply comments due on staff white paper or proposal on market transformation
2nd Quarter 2017	Proposed Decision further addressing market transformation

## 2.2. Custom Projects and Industrial Programs

D.16-08-019 discusses a number of aspects of custom projects, in particular in the industrial sector. The decision ordered a number of follow-up activities, including the formation of a working group on these issues.

Commission staff initiated the first of these activities, with an October 12, 2016 meeting to discuss measure-level treatment of baselines and the evidence (“preponderance of evidence” standard) required to show that a project or piece of equipment is repair-eligible or an accelerated replacement rather than a normal replacement.

Following the October 12, 2016 meeting, a core working group is meeting regularly to develop recommendations regarding measure level treatment and

information necessary to meet evidentiary standards, culminating in a planned staff resolution to be issued for comment before the end of 2016.

In addition, staff is initiating working group activities to consider improvement to the custom review process and the development and application of Industry Standard Practice (ISP) determinations. The majority of this work is anticipated to occur in 2017.

Relevant topics related to further work in the industrial sector and on custom projects include:

- Timing of review activities, including the time it takes for program administrators to respond to requests for additional information and Commission staff time spent reviewing project documentation;
- Third party incentive structures;
- Savings accounting at sites with on-site generation;
- Alignment of strategy energy management programs with custom/capital project design and delivery; and
- Realization rates and net-to-gross trends.

The anticipated procedural schedule for handling these industrial and custom project issues is as follows:

Date	Event
October 12, 2016	First meeting of measure-level baseline and evidence standards working group
Fourth Quarter 2016	Ongoing working group meetings on measure-level baseline and evidence standards
December 2016	Program administrators present proposals for Strategic Energy Management program
First Quarter 2017	Commission staff workshop on custom review process

First and Second Quarter 2017	Ongoing working group meetings on streamlining custom project processes and updating the ISP Guidance document
April 2017	Ruling issuing staff summary of Custom and ISP Guidance working group consensus or statement of issues
May 2017	Party comments on staff summary of Custom and ISP Guidance working group issues
May 2017	Party reply comments on staff summary of Custom and ISP Guidance working group issues
TBD	Proposed decision adopting any changes based on working group recommendations and comments

### 2.3. Ongoing Policy Issues

Though we do not anticipate the need for near-term decisionmaking in these ongoing issue areas, should a need arise, this proceeding will still be the venue for undertaking the following work:

- Necessary updates to the Database for Energy Efficiency Resources;
- Necessary updates to energy efficiency potential and goals;
- Necessary updates to the Energy Efficiency Strategic Plan;
- Necessary updates to the EM&V framework;
- Role of the California Technical Forum;
- Necessary updates to the ESPI mechanism;
- Necessary updates to the cost-effectiveness; framework for energy efficiency, especially if the integrated distributed energy resource (IDER) rulemaking (Rulemaking 14-10-003) updates demand-side



cost-effectiveness methodologies to address a societal cost test and/or the social cost of carbon, as is being contemplated there;

- Coordination with the statewide marketing, education, and outreach (ME&O) efforts under the Energy Upgrade California brand;
- Approaches for evaluations using normalized metered energy consumption and/or dynamic baselines; and
- Industry Standard Practice determinations.

We do not include a schedule for any of this work since we do not currently anticipate the need to issue decisions on these items in Phase III of this proceeding. However, should a need arise and time permitting, we may schedule work on these items in subsequent rulings.

#### **2.4. Remaining Issues from Previous Proceedings or Previous Phases of this Proceeding**

As mentioned above, there are several items of ongoing significance where we anticipate additional work in this proceeding in order to resolve them completely.

These include:

- Financing programs, including the following aspects:
  - The pilot programs being overseen by the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA), allocation of contingency funds, and the associated ME&O activities;
  - Potential proposals for metered energy efficiency transaction structures (MEETS);
  - Potential proposals for pay as you save programs;
  - Potential proposals for other forms of utility-arranged financing or tariffed offerings; or

- Potential revisions to existing on-bill financing approaches.
- Additional review, if needed, of the REN pilot programs.
- Locational targeting or sourcing of energy efficiency, in coordination with the IDER rulemaking (R.14-10-003). This may also involve the need for urgent action for geographically-targeted energy efficiency, such as in the case of the unexpected closure of the San Onofre Nuclear Generating Station (SONGS) or the Aliso Canyon Natural Gas Storage field.
- Measure-level baseline setting and evidence standards, discussed in D.16-08-019.
- Industry Standard Practice determinations.
- Embedded EM&V techniques.
- Oversight of High Opportunity Programs and Projects, as defined in AB 802 and covered by the December 31, 2015 Assigned Commissioner's Ruling governing these approaches.
- Energy efficiency budget category limits (e.g., for administrative, marketing and direct implementation costs) and accounting issues, including draft recommendations from the State Controller's Office (SCO), which have not yet been finalized.
- Local Government Partnership program reform, to the extent not already addressed by the business plans due to be filed January 15, 2017.
- Proposals for improvements to the usability and transparency of all ex ante values (i.e., deemed and custom).<sup>2</sup>

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<sup>2</sup> See Ordering Paragraph 19 of D.15-10-028.

- Any other policymaking coordination issues associated with the business plans due to be filed January 15, 2017.

Of the items above, we include a schedule only for the first item, related to the CAEATFA administration of financing pilot programs and the associated ME&O, because we are aware of the need for near-term decisionmaking to continue to support this work. Because several decisions associated with the financing pilots occurred outside of this rulemaking in the 2013-2014 program applications (A.12-07-001 et al.), we will serve a copy of this ruling on the service list for that proceeding, to allow for public notice that we may, in this proceeding, modify or update provisions of those prior decisions.

The anticipated schedule for addressing the CAEATFA administration of the financing pilots is as follows:

Date	Event
November 14, 2016	Workshop on mid-cycle review of CAEATFA financing pilots
November 21, 2016	Ruling addressing outstanding issues associated with CAEATFA financing pilots and the associated ME&O
December 12, 2016	Party comments in response to ruling
January 2017	Proposed decision addressing financing pilots and associated ME&O
February 2017	Commission decision addressing financing pilots and associated ME&O

We do not include an anticipated schedule for any of the other listed items at this time, since activities are uncertain. We may issue additional rulings at a later date to clarify whether and how work on these items will proceed.

**2.5 Procedural Direction for the Filing of Business Plan Proposals**

D.16-08-019 includes provisions for program administrators, including utilities, RENs, and CCAs, to make business plan proposals. According to

D.16-08-019 business plans are to be filed by January 15, 2017 by program administrators. Since January 15, 2017 falls on a Sunday, the actual filing deadline will be January 16, 2017.

For investor-owned utility program administrators, it is clear that the business plans will be filed as applications. We also require that utility program administrators serve a copy of their applications on the service list for this proceeding.

In addition, D.14-01-033 requires CCAs wishing to administer energy efficiency programs under Pub. Util. Code § 381.1(a)-(d) to file applications with the Commission. Any such CCA business plan applications will also be due on January 16, 2017 and will be required to be served on the service list of this proceeding.

Previous decisions have been silent on the procedure for RENs to file business plan proposals. We take this opportunity to specify those procedures. In particular, because any REN proposals that are approved will be funded out of revenues collected from customers of the underlying electric or natural gas distribution utility in whose territory the REN will operate, we will require that REN proposals be filed as separate motions and served on the service list of this rulemaking and the application proceeding of each relevant utility, no later than seven calendar days after the January 16, 2017 filing deadline (in other words, no later than January 23, 2017).

As an example, if BayREN chooses to present a business plan proposal, it shall be filed as a motion in response to the application of PG&E and served on the service list for that new application and this existing rulemaking.

If a REN proposes to utilize both electric and natural gas funding within the territories of single-fuel utilities (for example, if SoCalREN were to propose

both electric and gas measures within Southern California Edison and Southern California Gas territory), the motion may be filed in the application proceeding related to the electric utility only, but shall be served on service list for the application proceedings for both the electric and gas utility, as well as served on the parties to this rulemaking.

In addition, any applications from utilities and CCAs and/or motions from RENs that propose to utilize both electric and natural gas funding sources should specify the proportion of each that they propose.

Finally, we anticipate that, once filed, all of the applications of the program administrators that are filed in separate dockets on January 16, 2017 will be consolidated formally and quickly, in order to allow the Commission to consider all of the business plan proposals comprehensively in concert with each other. Consolidating the applications will also capture any REN motions filed within those applications.

### **3. Categorization, Need for Hearing, and Presiding Officer**

As in previous Phases of this proceeding, we confirm that the categorization of this rulemaking is ratesetting and that hearings are not required. Anyone who disagrees with this categorization must file an appeal of the categorization no later than ten days after the date of this scoping ruling (*see* Rule 7.6).

Carla J. Peterman is the assigned Commission and Julie A. Fitch is the assigned Administrative Law Judge (ALJ). Pursuant to Public Utilities Code § 1701.3 and Rule 13.2, Julie A. Fitch is designated as the Presiding Officer.

### **4. *Ex Parte* Communications**

In a ratesetting proceeding such as this one, *ex parte* communications with the assigned Commissioner, other Commissioners, their advisors, and the ALJ

are only permitted as described in Pub. Util. Code § 1701.3(c) and Article 8 of the Rules.

Because a number of questions have arisen on *ex parte* communications and the need to report them in this proceeding, we clarify that Rule 8.3(d) is currently in effect in this case. In particular, this means that because hearings have been determined not to be necessary, the reporting requirements of Rule 8.4 cease to apply. Should this designation change and if hearings were to be held in the future, Rule 8.4 would again apply.

Parties may also and are encouraged to report voluntarily on individual *ex parte* communications.

In addition, however, SB 215 (Leno, 2016), signed by the Governor and in effect as of January 1, 2017, modified the existing *ex parte* provisions for ratesetting proceedings. Though Rule changes have yet to be completed, the plain language of the new statute appears to require reporting of all *ex parte* contacts in ratesetting proceedings, regardless of whether hearings are held or not. Therefore, in this proceeding, beginning January 1, 2017, all parties shall report all *ex parte* contacts in accordance with Rule 8.4.

## **5. Filing, Service, and Service List**

The official service list is on the Commission's web site. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process Office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.

When serving any document, each party must ensure that it is using the current official service list on the Commission's web site.

This proceeding continues to follow the electronic service protocols set forth in Rule 1.10. All parties to this proceeding shall serve documents and

pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Parties are reminded, when serving copies of documents, that the document format must be consistent with the requirements set forth in Rules 1.5 and 1.6. Additionally, Rule 1.10 requires service on the ALJ of both an electronic and a paper copy of filed or served documents.

Rules 1.9 and 1.10 govern service of documents only and do not change the Rules regarding the tendering of documents for filing. Parties can find information about electronic filing or documents at the Commission's Docket Office at [www.cpuc.ca.gov/PUC/efiling](http://www.cpuc.ca.gov/PUC/efiling). All documents formally filed with the Commission's Docket Office must include the caption approved by the Docket Office and this caption must be accurate.

Persons who are not parties but who wish to receive electronic service of documents filed in the proceeding may contact the Process Office at [process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov) to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f).

## **6. Public Advisor**

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public Advisor at (866) 849-8390 or (415) 703-2074 or (866) 836-7825 (TTY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

**IT IS RULED** that:

1. This ruling shall be served on the service list for Applications 12-07-001 et al.

2. The category of this proceeding is ratesetting. Appeals as to category, if any, must be filed and served within ten days from the date of this scoping memo.

3. Administrative Law Judge Julie A. Fitch is designated as the Presiding Officer.

4. The scope of the issues for Phase III of this proceeding is as stated in "Section 2. Scope and Schedule" of this ruling.

5. The schedule for the proceeding is set in "Section 2. Scope and Schedule" of this ruling. The assigned Commissioner or Presiding Officer may adjust this schedule as necessary for efficient management and fair resolution of this proceeding.

6. With limited exceptions that are subject to reporting requirements, *ex parte* communications in ratesetting proceedings are prohibited. (*See* Public Utilities Code Section 1701.3(c); Article 8 of the Commission's Rules of Practice and Procedure.) Beginning January 1, 2017, all *ex parte* communications in this proceeding shall be reported in accordance with Rule 8.4 of the Commission's Rules of Practice and Procedure.

7. This proceeding will be completed within 18 months of the date of this amended Scoping Memo.

8. Hearings are determined not to be needed for Phase III of this proceeding.

9. Any business plan proposals by regional energy networks (RENs) shall be filed as a separate motion within the application proceeding of the incumbent electric utility in whose territory the REN proposes to operate, no later than January 23, 2017. REN proposals shall also be served on the service list for the relevant electric utility's application proceeding, this rulemaking, and the



application proceeding of the relevant natural gas utility, if the REN proposes to utilize any natural gas funding.

10. The energy efficiency business plan proposals of all program administrators or prospective program administrators, by application or motion, shall specify the amount of electricity and natural gas ratepayer funds proposed to be utilized.

Dated November 2, 2016, at San Francisco, California.

/s/ CARLA J. PETERMAN

Carla J. Peterman  
Assigned Commissioner

/s/ JULIE A. FITCH

Julie A. Fitch  
Administrative Law Judge