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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

**ADMINISTRATIVE LAW JUDGE'S RULING ISSUING REVISED RULEBOOK
FOR PROGRAMS AND PROJECTS LEVERAGING NORMALIZED METERED
ENERGY CONSUMPTION**

This ruling provides notice that, pursuant to the August 29, 2019 *Administrative Law Judge's Ruling Issuing Draft Revised Rulebook for Normalized Metered Energy Consumption and Inviting Comments on Population-Level Rules, Measurement Methods and Calculation Software*, the Commission's Energy Division staff have prepared a revised rulebook for normalized metered energy consumption.

1. Background

Normalized metered energy consumption (NMEC) rules were first introduced in the December 30, 2015 *Assigned Commissioner and Administrative Law Judge's Ruling Regarding High Opportunity Energy Efficiency Programs or Projects* (HOPPs Ruling), which addressed the first stages of implementation of Assembly Bill 802 (Stats. 2015, Chap. 590). In Decision (D.) 18-01-004, the California Public Utilities Commission (CPUC or Commission) designated the assigned Commissioner or Administrative Law Judge to issue a ruling "specifying a set of rules, guidelines, and specific requirements to address the critical issues and uncertainties" related to measurement and verification

(M&V).¹ Pursuant to D.18-01-004, on March 23, 2018, the *Administrative Law Judges' Ruling Seeking Comment on Certain Measurement and Verification Issues, Including for Third Party Programs*² directed staff to develop and maintain rules and requirements applicable to NMEC approaches in a section of the CPUC website. Pursuant to this direction, Commission staff prepared a rulebook for programs and projects that apply NMEC methods (Rulebook) and made this document available on the CPUC website.³ The March 23, 2018 ruling clarified that Commission staff will continue to update these rules as further developments become warranted to ensure continued appropriate implementation of ratepayer-funded programs, and invited interested parties to file comments on the requirements developed by Commission staff.

On January 31, 2019, the *Administrative Law Judge's Ruling on Certain Measurement and Verification Issues*⁴ provided a response to comments on the March 23, 2018 ruling. This ruling acknowledged two broad categories of NMEC approaches: "site-level," where savings are calculated at an individual building, project, or site level; and "population-level," where savings are measured based on the aggregation of many buildings. This ruling also confirmed that site-level NMEC will be classified as custom, and will follow a modified custom review process. The ruling also confirmed that measure-level analysis is necessary to inform lifecycle savings and program or project benefit calculations. Lastly, the

¹ D.18-01-004, at 45.

² Issued in Application (A.) 17-01-013 et al.

³ This section is a repository of rules and requirements related to the implementation of the Rolling Portfolio, available at: <http://www.cpuc.ca.gov/General.aspx?id=6442456320>.

⁴ Also issued in A.17-01-013 et al.

ruling directed staff to lead an NMEC working group to develop further rules and guidance for programs leveraging NMEC methods.

In the spring and summer of 2019, Energy Division staff convened a stakeholder working group to discuss appropriate guidelines and requirements for population-level programs. On August 29, 2019 the *Administrative Law Judge's Ruling Issuing Draft Revised Rulebook for Normalized Metered Energy Consumption and Inviting Comments on Population Level Rules, Measurement Methods and Calculation Software* included draft population-level rules as well as revised rules for site-level programs reflecting the directives in the January 31, 2019 ruling. The ruling requested stakeholder input on the draft Rulebook's rules for population-level NMEC programs, and language pertaining to NMEC measurement methods and calculation software intended to apply to both population- and site-level NMEC programs.

Bidgely, Inc. (Bidgely), the California Efficiency + Demand Management Council (CEDMC), Home Energy Analytics, Facility Energy Solutions LLC, kW Engineering, Inc. (kW Engineering), Pacific Gas and Electric Company, Power TakeOff, the Public Advocate's Office of the Public Utilities Commission, Recurve Analytics, Inc. (Recurve Analytics), Rising Sun Center for Opportunity, San Francisco Bay Area Regional Energy Network and Marin Clean Energy (jointly), San Diego Gas & Electric Company (SDG&E), Southern California Gas Company (SoCalGas), Southern California Edison Company (SCE), and Southern California Regional Energy Network timely filed comments in response to the ruling. On October 7, 2019, Bidgely, Home Energy Analytics, CEDMC, Gridium Inc. (Gridium), Oracle Utilities, Power TakeOff, Recurve Analytics, and SCE filed reply comments.

Comments focused on the following general topic areas: Measurement and Verification (M&V) plans, population-level NMEC program design thresholds, pay-for-performance requirements, qualification for NMEC classification for opt-out designs, and NMEC working groups.

2. Measurement and Verification (M&V) Plans

The draft Rulebook requires a Program-level M&V Plan to be submitted by program administrators (PAs) and included with the submitted Implementation Plan and advice letters for the program. In addition, a briefer Bid-level M&V Plan must be developed by a third-party bidder and included as part of their bid. Some parties commented that Program-level M&V Plans should be the responsibility of the implementing party, and that requiring Program-level M&V Plans be included with any advice letter submission would not be appropriate.

All Commission filings and submissions under the energy efficiency proceeding (Rulemaking 13-11-005) are ultimately the responsibility of the PA, and for this reason the adopted Rulebook maintains the requirement that the PA submit the Program-level M&V Plan. That said, the Rulebook updates pursuant to this ruling include clarifications that this requirement does not preclude third-party implementers from contributing to the development of the Program-level M&V Plan. Also, the adopted Rulebook removes the requirement to include Program-level M&V Plans with all NMEC program advice letters, and only requires including Program-level M&V Plans in advice letters if certain exceptions are being sought (as outlined in the Rulebook). The Program-level M&V Plan is still required to be included in all Implementation Plan submissions for the program.

3. Population-Level NMEC Program Pay-for-Performance Requirement

The draft Rulebook included a requirement that either (1) at least 75 percent of PA program payments for each population-level NMEC program must be based on payable savings determinations made using population-level NMEC methods, or (2) the PA must submit an explanation of an alternative approach via an advice letter that includes their Program-level M&V Plan. Various parties commented that there should be no pay-for-performance requirement. SDG&E commented that a 75 percent requirement could discourage some market entrants at this stage, and a 50 percent requirement would be more appropriate at this stage.

The adopted Rulebook includes the 50 percent pay-for-performance threshold, which will mitigate risk of overpayment and allow some additional flexibility for now as NMEC programs scale up and we learn more. Programs not meeting the 50 percent threshold may still seek an exception by submitting an explanation of an alternative approach via an advice letter that includes their Program-level M&V Plan.

4. Advice Letter Review

The draft Rulebook included requirements that NMEC programs that do not meet pay-for-performance or fractional savings uncertainty thresholds must submit a pre-program advice letter with an explanation of an alternative approach. Several parties commented that pre-program staff review, perhaps through the Commission's ex-ante review process, would be more appropriate than an advice letter submission.

The adopted Rulebook maintains the advice letter requirement as proposed in the draft Rulebook. Advice letters are appropriate because they provide an organized, public process to review applications for exceptions to

certain requirements. Most NMEC programs should not require approval for these exceptions to NMEC rules, especially since the pay-for-performance requirement has been lowered to 50 percent. Also, some programs that seek exceptions will need to submit a third-party contract approval advice letter regardless of these NMEC rules, and any NMEC exceptions can be addressed in that advice letter submission.

5. Proprietary versus Open Source Methods and Software

The draft Rulebook proposed additional advice letter and custom review requirements for NMEC measurement methods and savings calculation software that are proprietary and not available for public scrutiny. Gridium and kW Engineering commented that the open-source methods and software are not necessarily more valid or of higher quality than those that are proprietary. Gridium recommended that all NMEC methods and software be subject to the same additional review requirements. Recurve Analytics recommended that proprietary methods and software should be treated as custom. Power TakeOff objected to the requirement that proprietary software be provided to the Commission for inspection.

The adopted Rulebook retains the requirement of custom review for proprietary methods and software via the Custom Tools Archive (consistent with the draft Rulebook) while removing the advice letter requirement. The Custom Tools Archive offers a sufficient level of additional review at this time. Also, the adopted Rulebook keeps the requirement that proprietary software (and methods) are required to be provided to Commission staff for inspection. Staff regularly deals with confidential information across a variety of areas, and Public Utilities Code Section 585(a) requires computer models (including software)

utilized for the implementation of ratepayer funded programs to be made available to the Commission.

As NMEC programs grow, stakeholders and experts are encouraged to work together to develop common, public, open source methods and savings calculation software that can be reliably used to produce -- and reproduce -- savings determinations for NMEC programs. This type of transparency and collaboration will help build a strong platform for NMEC programs to succeed.

6. Applicability of NMEC Classification to Programs Using Opt-Out Designs

The draft Rulebook stated that the NMEC Rulebook does not apply to opt-out program designs (*i.e.*, randomized control trials). Some parties, including Bidgely, SoCalGas, MCE, Recurve Analytics and others, recommended that this requirement be removed to allow new types of innovative program designs. Oracle Utilities, however, recommended that opt-out programs should use existing processes and measurement methods, and not the processes outlined in the draft Rulebook.

Some programs may include both opt-in and opt-out components – and as such they may not fit neatly as a traditional randomized control trial (RCT) design is used to measure savings. The adopted Rulebook allows for the consideration of programs that have opt-in and opt-out components with the additional requirement of a pre-program advice letter, which must include the Program-Level M&V Plan with a description of how control groups will be used to determine savings, and why an NMEC method rather than a standard RCT approach is necessary and appropriate.

7. Stakeholder Engagement and Rulebook Updates

Several parties recommended continuing stakeholder engagement on NMEC issues via the NMEC Working Group, including a near-term focus on

site-level NMEC rules. Ongoing feedback from stakeholders will be critical to the success of NMEC programs. Energy Division staff will continue to engage stakeholders in an organized fashion to solicit feedback regarding NMEC programs. In addition, Energy Division staff may continue to make Rulebook updates as needed to adapt the language to changing conditions or updates to Commission policy.

8. NMEC Savings for Goal Attainment

NMEC measurement requirements introduce some complexities regarding processes for reporting and claiming savings. PG&E recommended that the NMEC Working Group submit a proposal for NMEC settlement and savings claims.

As an interim approach while more permanent guidance is developed, for NMEC program retrofits/interventions installed through program year 2020, PAs may count savings from these activities toward goal attainment in the program year installed (for example, savings from NMEC projects installed in 2020 could count toward 2020 goal attainment) even though the NMEC performance period may not yet be complete.

- Goal attainment submissions that include savings from NMEC projects must include any final savings numbers available for projects or cohorts of projects whose performance periods are complete, and up-to-date estimates for projects or cohorts of projects whose performance period is not complete; and

- PAs must submit a final claim, with savings calculated using NMEC methods after the performance period is complete, for all NMEC-based savings counted toward goal attainment by January 31st of two years after the program year installed. For example, to count savings from 2020 installed projects toward 2020 goal attainment, the PA must submit a final savings claim for those projects by January 31, 2022.

The adopted version of the Rulebook may be accessed at the following url:

<https://www.cpuc.ca.gov/General.aspx?id=6442456320>.

IT IS SO RULED.

Dated January 7, 2020, at San Francisco, California.

/s/ VALERIE U. KAO

Valerie U. Kao
Administrative Law Judge