**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

REPLY COMMENTS OF RECURVE ANALYTICS, INC. REGARDING ADMINISTRATIVE LAW JUDGE'S RULING SEEKING COMMENTS REGARDING NATURAL RESOURCES DEFENSE COUNCIL MOTION

I. Introduction

Recurve is an industry leader in meter-based demand flexibility. Recurve tracks consumption changes due to program interventions for both individual buildings and in aggregate to support resource planning and facilitate performance-based transactions. We encourage and support market-based solutions for decarbonization.[1] Recurve respectfully submits reply comments on the NRDC motion to solicit comments on the proposal developed by the "Energy Efficiency Portfolio Filing Processes Working Group" (Working Group) formed by the California Energy Efficiency Coordinating Committee (CAEECC). We wish to emphasize the existing mechanisms to support transparency and accountability in the portfolio and program review process with our reply comments. In the appendix, we have included slides from presentations in October 2019 that help illustrate our preferred re-casting of the review process to fully implement SB350.

[1] M. Golden, A. Scheer, C. Best. Decarbonization of electricity requires market-based demand flexibility, The Electricity Journal Volume 32, Issue 7, August–September 2019, 106621 *Available at:*

II. Realign Processes and Build for the Future

The CAEECC proposal includes no mention of the core principles of SB350 to drive a doubling of energy efficiency: performance or normalized meter based consumption. SB350 provides a path to fundamentally reshape our thinking about how California prioritizes and delivers energy efficiency. It is a crucial pathway to scale investment in energy efficiency alongside other resources.

SB50 redefined how California should be deploying energy efficiency. The law affects how we account for impacts, but it also should fundamentally change our existing review and approval processes because it shifts risk. The CAEECC proposal instead tweaks the energy efficiency review and approval process, and changes remain centered on a front-loaded stakeholder paradigm with very little accountability for delivery within the market. These limited changes would continue to encourage protracted debate on <u>if</u> we will get cost-effective savings impacts rather than <u>how much we should pay</u> (not just budget) to scale those impacts.

We encourage stakeholders and the Commission to use the pathways currently within the portfolio to fundamentally re-align risk and accountability to enable scaled investment in efficiency as a resource. The Commission should push toward a regulatory model that reduces the micromanagement of budgets by a body of stakeholders, refocuses oversight onto performance accountability, entrusts flexibility to those responsible for delivering, and allows ratepayers to pay for what they get not what stakeholders budget.

III. Program Administrators Need to Be Empowered to Optimize

We highlight SCE opening comments in which they characterize program administrators' responsibility to ensure the portfolios perform. To fulfill that obligation, administrators need to have appropriate decision-making authority and the data infrastructure and systems to know what is working and not and the ability to share that information with parties. SCE comments also highlight the value of performance models supported by the Commission.

> *"To manage decreasing and poor performing programs, IOUs should be allowed to retain the operational implementation of its contracts to avoid impeding an IOU's ability to meet its savings targets. For example, if a program is achieving its savings targets while underperforming on cost-effectiveness, IOUs should have the ability to manage the portfolio needs while remaining in the bounds of the CPUC-approved contract. D.16-08-019 expressed a preference for pay for performance provisions in IOUs' third-party contracts,[14] which will further enable portfolio management by allowing funds to be shifted away from underperforming third party programs."* - SCE Opening Comments p.12

D.16-08-019 expressed a preference for pay for performance approaches both because that is what SB350 called for, and because pay for performance provides a means of retaining program administrator accountability while also opening the door a little wider on third party innovation.

Third-party pay for performance models provide a transition to a future where energy efficiency can play a more significant role in resource optimization for the utilities and the state.

PG&E noted this future with their comments supporting continuing to use the Avoided Cost Calculator as the basis of monetized value for energy efficiency. We agree that it is essential to use a common valuation for all resources to more directly compare them and not to be hampered by variable interpretations of cost tests across proceedings.

> *"PG&E supports a future state in which resource EE is fully aligned and evaluated evenly with other DER programs and believes the best way to accomplish that is integration of supply side resources, including resource EE, into the IRP - therefore stick with ACC."* - PG&E Opening Comments p.18

IV. Pay for What is Delivered

It was in D.16-08-019 that the Commission outlined how business plans should respond to provisions in SB350. Performance is tightly aligned with risk in the discussions in that decision.

> *"Therefore, we encourage the program administrators to ensure risk-sharing and performance emphasis by utilizing pay-for-performance contracts in all contracts where savings measurement will be performed and where risk can be shared and not solely placed on ratepayer funding." - CPUC - D.16-08-019*

We agree with the Commission as we see performance accountability as a huge opportunity to transition to scaled investment in distributed energy resources. Pay-for-performance approaches motivate and allow implementers compensation for the upper bounds of what they can deliver. However, to do this, implementers need flexibility as they take on more and more risk, not just an easing of current constraints (though we agree this is also essential.) As noted by SCE, Program Administrators need to have the authority and urgency to procure and grow the value of demand-side resources to meet the state's needs.

We wish to remind stakeholders that ratepayers can also shed risk in this paradigm. In their opening comments, the Public Advocates Office expresses continued concern for ratepayer protection by asking for a mechanism to manage the risk of overpayment.

> *"The Commission also should introduce new processes to promote accuracy and transparency around program outcomes and remediation when the PAs fail to achieve forecasted cost-effectiveness requirements and energy savings goals. For example, requiring that PAs refund program funds in cases of persistent underperformance may deter overpromising and underdelivering on energy savings." - PAO Opening Comments, p. 3*

While we agree that processes to promote accuracy and transparency around program outcomes are essential, we do not agree with PAO's example. Performance accountability is a much better moderator of ratepayer risk as seen in other jurisdictions,[2] and the Commission has already adopted a clear pathway in California.

Protecting ratepayers can be accomplished in many ways, but one of the key strategies that the Commission has already endorsed is pay for performance. We agree with SCE that market competition is an essential component of ratepayer protection.

> *"The more appropriate vehicle to protect ratepayers from third party implementer administrative expenses is not through arbitrary cost caps, but through market competition, pay for performance structures, where feasible, and the solicitation and contracting process. The robust solicitation process creates competitive pressure that will discourage excessive administrative spending. Additionally, as the PAs move toward a pay-for-performance contracting structure, the focus should be on whether the third-party implementer delivers the energy savings and TRC for the contracted price, not on the level of administrative costs." SCE Opening Comments p 18*

Few approaches could protect against overpayment better than cutting back or eliminating pre-payment for resource acquisition activities. Ratepayers and utilities should pay for the value of the resource delivered. Implementers and aggregators should be paid for the value of the resource delivered. Like other market operators, aggregators can leverage capital from outside entities and meet customers willing to invest as much as possible to make the ratepayer dollar stretch farther.

If most of a portfolio's expenditures are tied to performance payments, as are many third party contracts, then persistent underperformance no longer presents a risk to ratepayers. It is appropriate and fair to shift risk onto those actors who can improve performance — the program administrators and the third party implementers. Arbitrating clawbacks will strain stakeholder groups and create additional administrative and legal costs that ultimately must be covered by ratepayers.[3]

We strongly advise against re-introducing a claw-back mechanism for program budgets. California's energy efficiency proceeding has already learned from this mistake, and it should not be repeated.[4] Instead, we encourage the Commission to press forward on reinforcing regulatory structures that support the expectations of performance and compensation mechanisms across market actors that provide a consistent reflection of the value delivered. We live in a data-rich environment with ample opportunity to demonstrate impacts while maintaining transparency and accountability within a system that can allow us to scale with confidence.

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[2] Other creative mechanisms are considered in this blog: *Striking the Balance in Energy Efficiency Regulation Between Utility Incentives and Customer Costs*, June, 2020

[3] The 2020 CAEECC stakeholder process cost ratepayers $258,400 California Energy Efficiency Coordinating Committee Annual Plan and Budget Advice Letter.

[4] Raising the Stakes for Energy Efficiency: California's Risk/Reward Incentive Mechanism, Climate Policy Initiative, 2014; and Promise of Performance, Zondits 2018

With Population NMEC, the Commission has already adopted a viable framework that provides a path to consistently and transparently track impacts with robust hourly data and minimum expectations for performance payments. When implemented via open-source software solutions with role-based access to results, there is no better way to promote accuracy and transparency in program outcomes. This approach is applicable for most of the current resource acquisition portfolio.

V. Optimize - Rinse - Repeat

Program administrators and implementers now have pathways to continue to optimize their delivery of efficiency impacts, and they can innovate to re-align incentives to deliver even more. Employing budget caps and controls arbitrated via CAEECC risks putting the brakes on this innovation and narrowing the opportunities to significantly expand investment. Instead, the Commission should focus on updating cost-effectiveness rules and tools (and common valuation across all distributed energy resources) to align with the value being purchased and to support co-investment rather than penalize it.[5]

Finally, several parties commented on the need for EM&V to return to a 2-year cadence. We agree. With robust embedded M&V, like that delivered through Population NMEC, the need for annual updates to deemed estimates will diminish and possibly vanish. Actuarial performance data at the building end-use level for all sites touched in a portfolio and non-participants can become the standard format for monitoring program performance, rather than how well a portfolio did relative to deemed assumptions. Reported NMEC savings reflect actual accomplishments and allow EM&V dollars to be focused on other core research questions.

IV. Conclusion

Recurve Analytics, Inc. appreciates the opportunity to comment and respectfully requests the Commission to consider the concerns raised herein.

Dated: September 15, 2020

Respectfully submitted,

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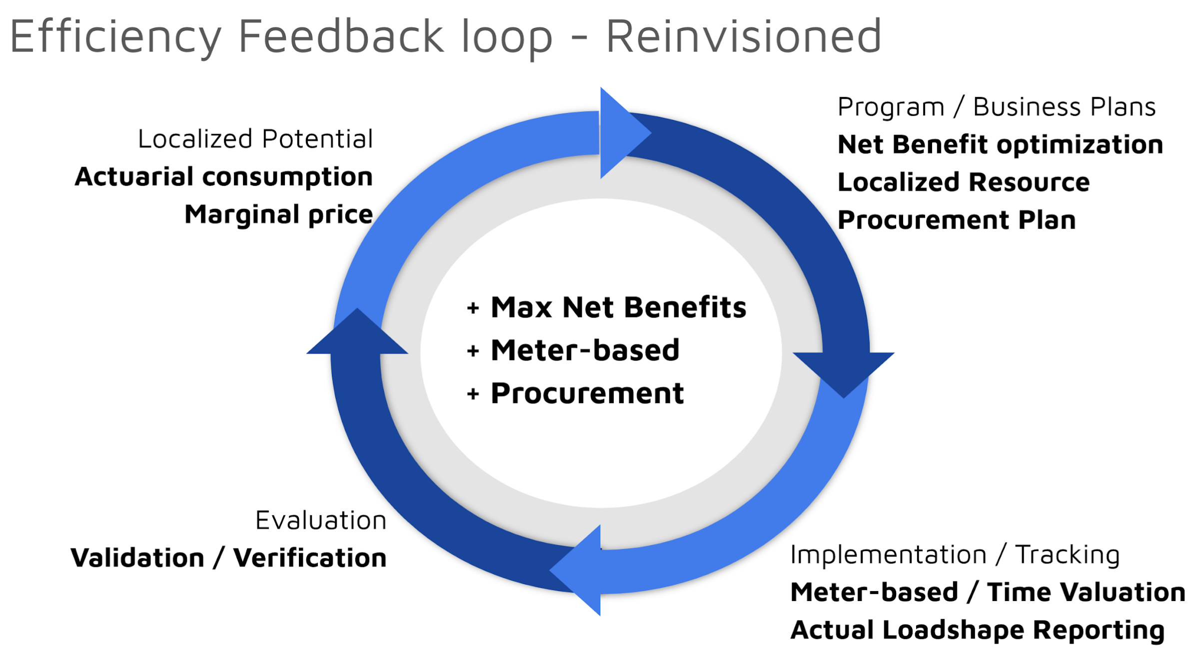
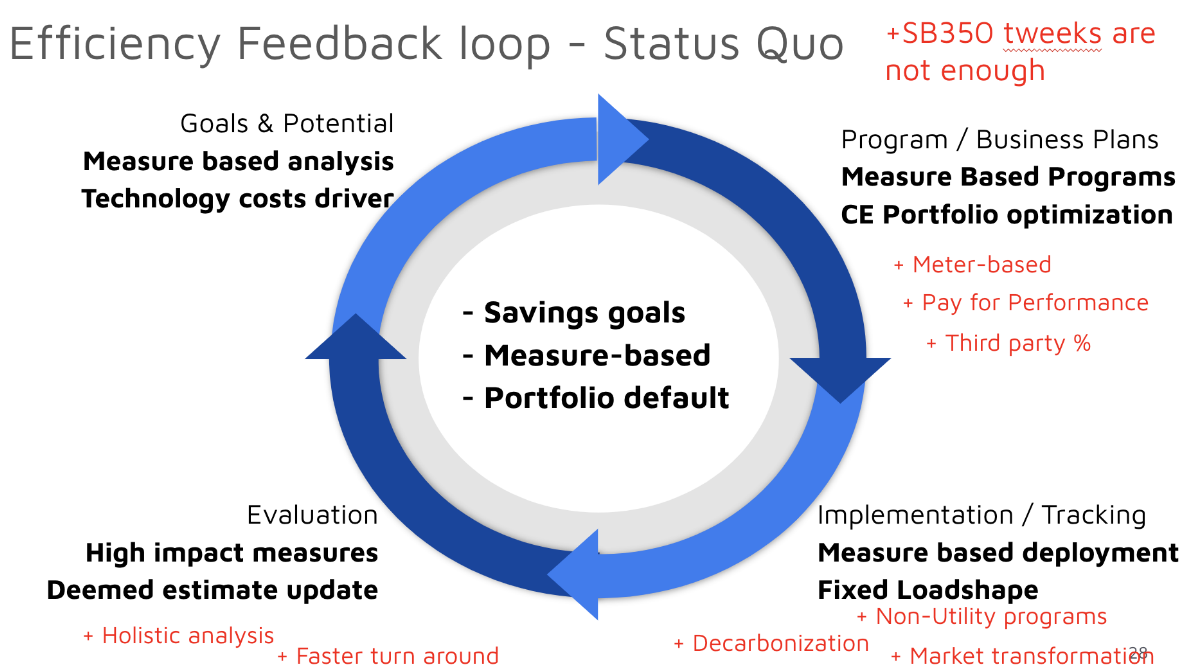
[5] See Recurve's Opening and Reply Comments on Goals and Potential from earlier this year.

Appendix. Recurve Slides from Potential and Goals Presentation October 2019

Slide 1: Full Reconsideration of Review Process In Relation to NMEC - SB350:



Slide 2: Incremental Consideration of NMEC (red + symbols) to Current Deemed Planning System is Insufficient:



Slide 3: Incremental value of NMEC (red + symbols) to Rolling Portfolio Cycle Evaluation Process as it was around D.16-08-019: