



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

**FILED**

07/20/22

04:59 PM

R1311005

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

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

**MOTION OF ASSOCIATION OF BAY AREA GOVERNMENTS  
REQUESTING CLARIFICATION REGARDING  
CUSTOM PROJECT REVIEW PROCESS**

Elizabeth M. Kelly  
LAW OFFICE OF ELIZABETH KELLY  
P.O. Box 225037  
San Francisco, CA 94122  
Telephone: (415) 535-9998  
Email: [beth@emk-law.com](mailto:beth@emk-law.com)

Counsel for:  
ASSOCIATION OF BAY AREA GOVERNMENTS

July 20, 2022

## **Table of Contents**

<b>I.</b>	<b>Background Regarding BAMBE.....</b>	<b>1</b>
<b>II.</b>	<b>BayREN Seeks Clarification that the BAMBE Program Is Not Subject to the Custom Project Review Process .....</b>	<b>3</b>
	A. The Custom Project Review Process Is Not Applicable to the BAMBE Program Based Upon a Plain Reading of D.11-07-030.....	3
	B. The CPR Process Was Not Designed for Multifamily Projects.....	5
	C. RENs Are Not Subject to Cost Effectiveness Requirements .....	6
<b>III.</b>	<b>Request for Relief.....</b>	<b>7</b>
<b>IV.</b>	<b>Conclusion .....</b>	<b>7</b>

**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)

**MOTION OF ASSOCIATION OF BAY AREA GOVERNMENTS  
REQUESTING CLARIFICATION REGARDING  
CUSTOM PROJECT REVIEW PROCESS**

Pursuant to Rule 11.1 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure, the Association of Bay Area Governments on behalf of the Bay Area Regional Energy Network program (BayREN) respectfully submits the following motion requesting that Assigned Administrative Law Judges (ALJs) Fitch and Kao provide clarification regarding the applicability of the Commission’s custom project review (CPR) process to BayREN’s Bay Area Multifamily Building Enhancements Program (BAMBE).

**I. BACKGROUND REGARDING BAMBE**

BayREN’s BAMBE program was created to help overcome barriers to energy efficiency retrofits in multifamily properties. BAMBE provides customers with \$750 cash back per unit when the customer makes upgrades designed to save 15% or more of the multifamily building’s energy usage.

As California pursues its ambitious climate protection goals, the need for accelerating energy efficiency improvements in existing buildings has grown increasingly urgent, especially in market segments like multifamily buildings that have historically been underserved by energy

efficiency programs. BAMBE received national recognition as an exemplary program from the American Council for an Energy-Efficient Economy (ACEEE) in 2019.<sup>1</sup> In particular, ACEEE noted that:

[BAMBE's] success flows from a three-pronged approach to overcoming barriers:

- *It's simple.* Property owners know up front the exact size of the rebate: \$750 per unit. They get to choose their own contractors.
- *It's free.* Owners receive customized, high-quality technical expertise at no cost.
- *It's a one-stop shop.* Owners have a single point of contact for comprehensive planning, measure identification, financial analysis, installation and verification, and financing referrals.<sup>2</sup>

The BAMBE program model has allowed BayREN to effectively serve properties with characteristics and ownership types that make upgrades particularly challenging, in a sector that is already confronted by the split incentive.

Starting in 2020, the program instituted targeting criteria, which prioritizes properties that have less than 100 units, are deed restricted and/or naturally occurring affordable, or have a nontraditional ownership structure such as homeowners' associations (HOAs) or co-ops. Projects in counties that are geographically underrepresented in the program are also given priority. In 2020, 93% of projects served by the program met these criteria, and the projects that did not were already in the pipeline prior to the implementation of the new the criteria.

---

<sup>1</sup> Nowak, Seth, Martin Kushler, and Patti White, "The New Leaders of the Pack: ACEEE's Fourth National Review of Exemplary Energy Efficiency Programs" (ACEEE Report), January 2019. Available at: <https://www.aceee.org/research-report/u1901>.

<sup>2</sup> ACEEE Report at 50.

Target Criteria	2020 Projects	2020 Units	% of Total Projects in 2020
Less than 100 Units	21	668	36%
Low-income <sup>3</sup>	21	2,022	36%
Deed-restricted or NOAH	3	453	5%
Underrepresented County	9	367	16%
HOA or Co-op	0	0	0%
None	4	645	7%

**II. BAYREN SEEKS CLARIFICATION THAT THE BAMBE PROGRAM IS NOT SUBJECT TO THE CUSTOM PROJECT REVIEW PROCESS**

Based upon Commission Staff’s interpretation of Commission decisions, all projects within the BAMBE program are required to undergo CPP review. BayREN disagrees with this interpretation based upon: (1) the plain language of D.11-07-030; (2) the fact that the CPR requirements are not suited for multifamily properties; and (3) as a regional energy network (REN), BayREN tracks cost effectiveness, but is not subject to cost-effectiveness requirements. For these reasons, BayREN requests clarification from the Commission that the BAMBE program is exempt from the CPR process and is instead subject to a desk top review process.

**A. The Custom Project Review Process Is Not Applicable to the BAMBE Program Based Upon a Plain Reading of D.11-07-030**

BAMBE should not be subject to the CPR process because it is contrary to the plain text of D.11-07-030. The CPR process is described in D.11-07-030 and is implemented in accordance with the Statewide Custom Project Guidance Document maintained by Commission Staff (CPR Guidance).<sup>4</sup>

D.11-07-030 provides:

Custom measures and projects are energy efficiency efforts where the customer financial incentive and the *ex ante* energy savings are determined using a site-specific

---

<sup>3</sup> AB 1550 and/or SB 535 communities.

<sup>4</sup> Statewide Custom Project Guidance Document, Version 1.4, dated June 2, 2021 (CPR Guidance). Available at <https://file.ac/api/3/link/OEr-2p-bk3A/SW%20Custom%20Project%20Guidance%20Documentv1.4.pdf?download=true>

analysis of the customer's existing and proposed equipment, and an agreement is made with the customer to pay the financial incentive upon the completion and verification of the installation.<sup>5</sup>

The Decision is clear that two factors are necessary for the CPR process to apply. Both the customer financial incentives and the *ex ante* savings must be based upon a site-specific analysis. In the case of BAMBE, the customer financial incentives are a flat number: \$750 per unit where projected energy savings exceed 15%.

On July 15, 2021, BayREN sent a letter to Energy Division requesting clarification that the CDR is not applicable to the BAMBE program. BayREN and Energy Division Staff thereafter had a telephonic meeting on this issue. On December 2, 2021, the Commission replied (Energy Division Letter, included as Attachment A hereto) stating that "CPUC staff finds no delegated authority that allow staff to exempt BayREN's Bay Area Multifamily Building Enhancements Program (BAMBE) projects from the Custom Project Review (CPR) processes."<sup>6</sup> Energy Division Staff "propose[d] that BayREN consider offering BAMBE as a deemed program."<sup>7</sup>

Currently, roughly 35% of program measures are custom because there is not a workpaper at all, or the workpaper is overly prescriptive and does not apply to either the base case (existing condition) or measure case specific to a multifamily building. Deemed measures only exist for common measure types that have a moderate-to-high TRC and are primarily developed by investor-owned utilities (IOUs) to serve common opportunities and applications, and as a result will leave behind multifamily properties, underserved populations, and unaddressed energy savings opportunities. Additionally, deemed measures have both deemed costs and deemed savings. The deemed costs are often significantly lower than the actual full measure cost (material,

---

<sup>5</sup> D.11-07-030 at 31.

<sup>6</sup> Energy Division Letter at 1.

<sup>7</sup> Energy Division Letter at 1.

labor, and ancillary). By focusing *only* on marginal deemed costs, the program is unable to develop meaningful incentives to help these underserved property types and populations pursue energy upgrades.

### **B. The CPR Process Was Not Designed for Multifamily Projects**

Further, applying the CPR to REN multifamily projects is an attempt to fit a square peg in a round hole as the CPR process is designed for energy-intensive commercial, industrial, and agricultural projects, not multifamily residential projects, and requires documentation that multifamily buildings generally do not possess.

Specifically, the CPR appears to be designed for energy intensive commercial, industrial, and agricultural projects, and not for multifamily residential, because most multifamily residential facilities do not possess the documentation the CPR process requires. For example, multifamily buildings generally do not have multiple years of maintenance records and equipment replacement and procurement plans—especially the ones that the BAMBE program targets—as they rarely have onsite engineers or asset managers. The probability of having this documentation for apartment end-uses is even less likely. Additionally, the default electric and gas rates provided by the CPUC for calculating payback in accordance with custom project requirements are all commercial, industrial, and agricultural.

Since the program has been subject to the CPR process the administrative requirement of bi-weekly Custom Measure and Project Archive (CMPA) uploads has had a negative impact on the customer participation because it does not align with typical participant practices, project review, and reservation timelines. Projects that have been in scope of work development for months are notified that they have to wait for several weeks to many months to get started, even if there are no issues identified. Enrollment timing is sensitive as customers often need to determine

the level of certainty and lock in prices with contractors. This has resulted in some projects deciding not to proceed with the energy retrofit.

BAMBE program staff have also been in conversation with the CPUC Custom Review team about some of the reasonableness of requirements such as return on investment (ROI) in a multifamily, split incentive setting, and cost effectiveness requirements.<sup>8</sup> ROI is not a driver for multifamily customer participation because of split incentives. Rather, drivers for participation are more about total construction cost compared to the rebate amount, improved comfort and property value enhancement, environmental ethics and carbon savings, and availability of technical assistance to navigate scope and program compliance.

The BAMBE program intends to continue to provide a combination of deemed and custom measures to best serve the multifamily sector and prioritize underserved properties, and would like to work with the Commission staff and consultants to evaluate the effectiveness of the program in a way that does not compromise the program's effectiveness in reaching and serving its target audience. We sincerely hope the Commission will concur that the BAMBE program is exempt from the CPR process, as the Custom Project Review process is administratively burdensome, jeopardizes project conversion and participant satisfaction in an already hard-to-reach environment.

### **C. RENs Are Not Subject to Cost Effectiveness Requirements**

A key driver for the CPR process and documentation requirements relates to cost effectiveness. An accurate baseline allows for more certainty as to the benefits and cost effectiveness of the program. However, because of those documentation requirements, the needs of the underserved multifamily

---

<sup>8</sup> Another issue discussed with Commission staff has been electrification measures not meeting the custom review payback requirement. For example, Statewide Fuel Substitution Work Papers have negative payback, so this is not unique to the BayREN Multifamily program.

segment are unmet. As RENs track, but are not subject to, cost effectiveness requirements, they are well-suited to serving this unmet need. Further, BayREN has worked to ensure that its cost effectiveness is not overstated by applying a net-to-gross of 0.7 for all completed projects.

BayREN believes that these steps meet the intent of the CPR Decision, D.11-07-030 which provides:

An effective custom measure and project review process balances the needs of program participants who are investors and beneficiaries, the IOUs who administer the programs, and ratepayers who provide incentive funding contingent on adequate oversight of their investment. The process identified here aims to strike that balance. This review process is intended to be applied consistently throughout the program cycle; however, clarification may be made at the discretion of the Assigned Commissioner or Administrative Law Judge.<sup>9</sup>

The BAMBE program strikes this balance among the needs of participants, BayREN as program administrator, and ratepayers.

In sum, the BAMBE program is unique from other custom programs which have variable incentive amounts offered, are directed toward non-multifamily segments, and whose program administrators are subject to cost effectiveness criteria.

### **III. REQUEST FOR RELIEF**

For the reasons set forth above, BayREN seeks clarification from the presiding Administrative Law Judge that the BAMBE program is exempt from CPR review and instead should follow a desk top review process collaboratively developed between BayREN and Energy Division staff.

### **IV. CONCLUSION**

By design, BayREN is required to support gaps in the market not otherwise served by IOU programs. The BAMBE program has an equity focus to prioritize overburdened populations and

---

<sup>9</sup> D.11-07-030, Attachment B at B1.

building types, and energy savings opportunities that have historically been underserved. In order to offer a program unique from the IOUs, capturing the hardest to reach properties within the multifamily sector and addressing split incentives, BayREN has a whole-building program design that evaluates all energy efficiency measures as they actually exist at a given property. Based upon extensive stakeholder feedback during the original program design, the program was approved utilizing a blended approach to savings estimates; using deemed measure savings where they exist in combination with software analysis where appropriate. If a single measure incentive is appropriate for a project, they can be referred to an IOU, deemed or direct install program. It is key that BayREN continue to offer a whole-building program with the option to combine measure opportunities between common areas and in-units, and that prioritized project types taking advantage of other programs that are time-bound (such as LIWP), and sensitive to fluctuations in contractor and equipment costs are not held up by a custom review process just prior to construction.

As an Equity program that is increasingly targeting property types such as naturally occurring affordable housing and small independently owned buildings, it is also key that it evaluate and claim all possible energy efficiency measures at a site, beyond only those that would meet specific, prescriptive workpaper assumptions. The program's current approach and calculation methodology enable BayREN to pursue and address multiple challenges facing underserved and overburdened communities, by taking advantage of all the energy-saving opportunities. For underserved building types in overburdened communities, these opportunities have the potential to significantly improve health, safety, comfort, and finances. Along with reducing consumption and GHG emissions, these non-energy benefits are crucial to BayREN and the local governments it represents.

BayREN thanks Assigned Commissioner Shiroma and Assigned Administrative Law Judges Fitch and Kao for their consideration of this motion.

Respectfully submitted,

/s/ Elizabeth Kelly  
Elizabeth M. Kelly  
LAW OFFICE OF ELIZABETH KELLY  
P.O. Box 225037  
San Francisco, CA 94122  
Telephone: (415) 535-9998  
Email: [beth@emk-law.com](mailto:beth@emk-law.com)

Counsel for:  
ASSOCIATION OF BAY AREA GOVERNMENTS

July 20, 2022