



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

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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
AND COUNTY OF VENTURA
REQUESTING ADOPTION OF STREAMLINED PROCESSES
FOR MULTIFAMILY PROJECTS**

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**MOTION OF ASSOCIATION OF BAY AREA GOVERNMENTS
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FOR MULTIFAMILY PROJECTS**

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)¹ and the County of Ventura on behalf of the Tri-County Regional Energy Network program (3C-REN)² respectfully submits the following motion

¹ BayREN administers the award-winning Bay Area Multifamily Building Enhancements (BAMBE) program, which caters to small, affordable (deed restricted and/or naturally occurring) multifamily (MF) buildings in communities disproportionately experiencing health, heat, and housing cost burdens. It prioritizes in-unit measure that benefit tenant indoor air quality and thermal comfort while aiming to reduce utility bill costs. The program provides no-cost site assessments, technical assistance and rebates to incentivize multifamily property owners to make EE and electrification improvements. It partners with other agencies and energy upgrade programs to offer a more holistic program that provides energy savings and other benefits that may be of higher importance to communities served, including health, resilience, and housing quality and affordability. Its 2024 budget is approximately \$8.4 million.

² 3C-REN administers the Multifamily Home Energy Savings (HES) program which is a multifamily residential equity program that delivers energy savings to hard-to-reach (HTR) multifamily properties and fills a gap in multifamily energy efficiency services in the Tri-County Region. The program requires three or more upgrades in the project scope, a percentage of which must directly benefit tenants, and the project must achieve a minimum greenhouse gas (GHG) emission savings per apartment. The program includes no-cost site assessments, technical

requesting use of *ex post* Energy Division processes, in lieu of *ex ante* processes currently used, for multifamily projects to be served with energy efficiency measures.

By this Motion, BayREN and 3C-REN request that the Commission:

- (1) Determine that the multifamily sector be considered Hard-to-Reach (HTR), independent of geography or other criteria, provided Program Administrators (PAs) prioritize those who have been least served and/or hardest to reach in their program design;
- (2) Apply “Direct-to-Decision” treatment to all multifamily projects, resulting in an existing conditions baseline for determining savings and a self-certification Preponderance of Evidence (POE) requirement; and
- (3) Evaluate custom multifamily projects on an *ex post* basis rather than through the Custom Project Review (CPR) *ex ante* process.

BayREN and 3C-REN propose these elements as a comprehensive solution as no one element resolves the existing challenges of existing processes as applied to multifamily projects. BayREN and 3C-REN considered narrower lenses and approaches to address the multifamily sector from a policy perspective, but due to the drawbacks of each of alternative, BayREN and 3C-REN urge the Commission to adopt this comprehensive solution and allow Portfolio Administrators (PAs) to identify the key objectives for their multifamily offerings and design their programs to achieve those objectives.

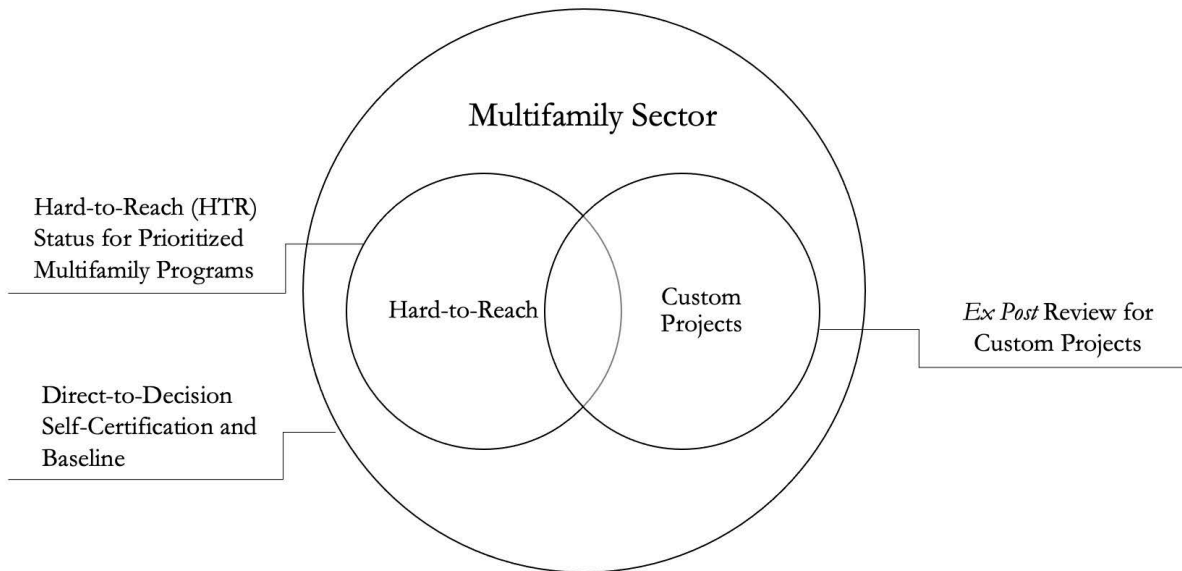
BayREN and 3C-REN respectfully request that a workshop be held on this proposal in February and that a timely Decision be issued, preferably within six months of the date hereof.

assistance, and rebates paid directly to property owners/managers. The structure includes enhanced incentives for underserved properties and adders for high performance measures, such as heat pumps. Its 2024 budget is approximately \$3.7 million.

I. BAYREN AND 3C-REN SEEK SIMPLIFICATION OF ENERGY DIVISION REVIEW PROCESSES FOR THE MULTIFAMILY SECTOR

By this Motion, BayREN and 3C-REN request that the Commission: (1) determine that the multifamily sector is Hard-to-Reach (HTR), independent of geography or other criteria, provided a PA’s program design prioritizes those who have been least served and/or hardest to reach; (2) apply “Direct-to-Decision” treatment to all multifamily projects, resulting in an existing conditions baseline for determining savings and applying a self-certification POE requirement; and (3) evaluate custom multifamily projects on an *ex post* basis rather than through the Custom Project Review (CPR) *ex ante* process.

These three requests are interconnected as described in this Motion, each addressing both common and distinct issues. Broadly, these requests together can be envisioned as follows:



The present Motion requests a comprehensive streamlining of the review process for projects upgrading multifamily properties. This is a significant ask; however, BayREN and 3C-

REN considered myriad narrower solutions, each of which failed to meet the needs of this unique sector.

A. Identify All Multifamily Housing as Hard-to-Reach (HTR) for Programs Prioritizing the Least Served and/or Hardest to Reach in Program Design

Multifamily properties are largely excluded from the Commission’s Hard-to-Reach (HTR) criteria, even though many, if not most, of multifamily buildings are hard-to-reach in practice due to the myriad constraints that these properties face. This Motion includes the findings of reports from California to the European Union which extensively document the challenges faced by this sector, not least of which is the split incentive, or misalignment between owner and renter interests. Further, multifamily residents whether renter or unit owner tend to be lower- and middle-income. Even if their location is not hard to reach, the sector as a whole is hard to reach with energy efficiency measures due to key barriers and attributes of the sector.

The Commission has standing criteria to define Hard-to-Reach (HTR)—including specific criteria for small business and residential—but as a whole these fail to meet the needs of the multifamily sector. Particularly, if the geographic criterion of the current HTR definition is not met, the definition all but precludes multifamily housing from meeting the current standard of HTR. However, to be considered HTR, the PA’s multifamily program design must prioritize the least served or hardest to reach. This program prioritization should include affordable housing, unless those properties should be otherwise served by the Commission’s low-income energy efficiency programs, such as the Energy Saving Assistance (ESA) program. BayREN and 3C-REN use the definition of affordable housing used by the American Council for an Energy-Efficiency Economy (ACEEE) in their report issued this month on multifamily barriers:

Affordable housing in this paper refers to both subsidized and unsubsidized affordable housing. *Subsidized affordable housing* refers to publicly or privately owned multifamily buildings that receive government subsidies to keep rents at an affordable rate. *Unsubsidized (or naturally occurring) affordable housing* refers to

multifamily housing that does not receive subsidies but has rents affordable to low- and moderate-income households due to the buildings' characteristics (such as location, condition, etc.).³

This HTR standard holds importance for RENs specifically, as RENs are specifically designated to undertake:

- Activities that utilities or CCA program administrators cannot or do not intend to undertake.
- Pilot activities where there is no current utility or CCA program offering, and where there is potential for scalability to a broader geographic reach, if successful.
- Activities serving hard-to-reach markets, whether or not there is another utility or CCA program that may overlap.⁴

PAs using the HTR designation for multifamily programs should be required to prioritize those who have been least served and/or hardest to reach in their program design as is proposed in this Motion.⁵

B. Apply Direct-To-Decision Treatment to All Multifamily Projects

Due to the hard-to-reach nature of multifamily buildings and the differences between expected and *actual* energy efficiency in multifamily buildings, BayREN and 3C-REN request that multifamily customers be qualified for Direct-to-Decision treatment, providing an existing conditions baseline and using a self-certification Preponderance of Evidence (POE) requirement.

Other segments receive Direct-to-Decision treatment, including the small business segment:

³ Jarrah, Alexander, Emily Garfunkel, and David Ribeiro. 2024. *Nobody Left Behind: Preliminary Review of Strategies to Support Affordable Housing Compliance with Building Performance Standards*. Washington, DC: ACEEE (ACEEE Report) at 1. Available at: www.aceee.org/research-report/b2401.

⁴ D.19-12-021 at 32.

⁵ D.23-06-055 at 44.

The purpose of developing the small-sized business customer definition is to pre-define a criterion that may be used to qualify a class of customers with a “Direct-to-Decision” accelerated replacement treatment. The “Direct-to-Decision” treatment means that a qualified measure or project would default to an accelerated replacement measure type with an existing conditions first baseline without any further preponderance of evidence requirement.⁶

The multifamily sector similarly merits this Direct-to-Decision treatment, both for purposes of existing baseline treatment and use of a self-certification POE requirement.

Multifamily buildings lag in their adoption of efficiency measures and use heating and water systems well beyond the useful lives of their existing equipment. Older multifamily building stock, including those that predate Title 24, do not approach today’s code standards, nor will they without considerable support to overcome barriers in the multifamily sector. This results in high ongoing costs and GHG emissions, decreasing the health, safety, and comfort for their inhabitants. Multifamily programs authorized by the Commission can change this trajectory. Due to these characteristics, project savings should be calculated on an accelerated replacement basis. BayREN and 3C-REN acknowledge the importance of energy savings calculation accuracy and offer cooperation to ensure that M&V and EM&V standards are met while simultaneously meeting the needs of the multifamily sector served.

Just as small businesses are allowed to use a self-certification method for demonstrating POE, so should multifamily properties. The currently imposed POE requirements pose unique and burdensome challenges for multifamily projects specifically. As discussed below, many multifamily owners—particularly “mom and pop” ones—do not have the documentation expected by Energy Division.

⁶ Resolution E-4939 at 29.

This issue is no longer limited to custom projects. Prior to this year, the Energy Division had required POE documentation solely of “custom” projects going through the Custom Project Review (CPR) *ex ante* review process discussed below. “Deemed” projects, meaning those with an approved workpaper that determines the savings of the measures, were subject only to *ex post* review. However, Energy Division’s Deemed POE Memo now requires POE documentation for deemed projects as well. This expansion of *ex ante* processes for *all* projects fails to align with regulatory best practices as discussed in this Motion.

C. Subject Custom Multifamily Housing Projects to Ex Post Review Rather than Custom Project Review (CPR) Ex Ante Processes

In order to achieve comprehensive retrofits in multifamily buildings, BayREN and 3C-REN have found that approximately 80% of measures (*e.g.* windows, lighting upgrades, crossover repairs, electrification measures that do not have existing conditions matching the workpaper baselines such as steam, hydronic heating, or proposed measures that do not match workpaper measure conditions such as VRFs) cannot take a deemed savings approach. To include these measures in project scopes and claim savings, the portfolio administrators (PAs) must use custom measures, and as a result, follow the Commission’s onerous *ex ante* Custom Project Review (CPR) process. The CPR process adds 2-8 months to an energy efficiency project’s timeline. BayREN estimates that, for every \$100 in incentives provided, it expends about \$5 on preparing *ex ante* CPR documentation for multifamily program participants going through the CPR process. Due to the burdensome nature of the CPR, BayREN Technical Assistance providers (TAs) have been avoiding custom measures or not claiming their savings even when they make sense for the building owner and tenants, resulting in non-optimal project scopes and unclaimed savings. Many PAs simply do not offer programs which include custom measures.

These unacceptably long delays have a significant negative impact on customers' experience in the energy efficiency process and strongly inhibit a PA's desire to—or ability to—deploy deep, equitable retrofits in multifamily housing, particularly for existing building stock. The Commission's *ex post* processes provide key oversight of projects and portfolios, including through the process of adjusting savings claims with net-to-gross (NTG) figures which can address questions of free ridership and other market effects.

D. BayREN and 3C-REN Request a Workshop on This Proposal and Request a Timely Commission Decision, Preferably within Six Months

BayREN and 3C-REN respectfully request that the relief requested in this Motion be addressed promptly. Specifically, BayREN and 3C-REN request that a workshop on this matter be held in February and a Decision be issued within six months of the date hereof.

For over a year following the prior BayREN *Motion Requesting Clarification Regarding Custom Project Review Process related to its Bay Area Multifamily Building Enhancements (BAMBE) Program* filed July 20, 2022 (BAMBE Motion), BayREN worked collaboratively with the Commission's Energy Division to address process challenges faced by the BAMBE Program, resulting in temporary solutions for the BAMBE Program which will extend until November 2024.

As BayREN stated in its BAMBE Motion Withdrawal, dated November 27, 2023 (BAMBE Motion Withdrawal):

BayREN notes that the solutions agreed between BayREN and Energy Division are temporary, and the more durable solutions discussed with Energy Division were better suited to the multifamily sector as a whole, rather than as a BAMBE Program-specific exemption. To that end, in the coming weeks, BayREN will serve a motion presenting a proposed solution for the multifamily sector.⁷

⁷ BAMBE Motion Withdrawal at 1-2, emphasis added.

The present Motion presents this durable solution for the multifamily sector. BayREN and 3C-REN respectfully request that the Commission address this motion promptly, preferably no later than six months of the date hereof.

II. EXISTING COMMISSION PROCESSES IMPOSE UNDUE BURDENS, PARTICULARLY ON THE MULTIFAMILY SECTOR; SIMPLIFICATION IS IMPERATIVE

The Commission's energy efficiency review processes would greatly benefit from a significant realignment that: (1) is consistent with the Commission's policy of energy efficiency being first in the loading order of procurement; (2) reflects a mutual desire of PAs and Energy Division to support rather than thwart energy efficiency efforts; (3) improves the customer experience; and (4) makes better use of ratepayer funding. To start, BayREN and 3C-REN urge the Commission to start down this path now for the multifamily sector.

Over the decades, Energy Division review processes have generally become unduly burdensome, have improved significantly in some areas, but still require pragmatic updating – especially in the advent of equity programs with energy savings claims. Some of these requirements stemmed from the period when investor-owned utilities (IOUs) received shareholder incentives for running energy efficiency programs.⁸ These incentives no longer exist and technical engineering cooperation has dramatically improved. Other processes were built over time, then further built up as time has passed.

Despite efforts to consider alternative technical and process efficiencies, the current *ex ante* compliance process applied to multifamily customers—which are already very challenging to serve—has led to disproportionate program costs (60 staff hours per project on a project feasibility study alone) and extensive delays in delivering much needed upgrades to buildings (2- to 8-

⁸ Efficiency Savings and Performance Incentive (ESPI).

months' delay on average), and impeding customers who need it most from accessing ratepayer funding. These *ex ante* processes fail to align with the needs of the multifamily sector requiring documentation that, particularly in the case of “mom and pop” multifamily buildings, is often unavailable. A reasonable realignment of the *ex ante* review process to meet the needs of the portfolio segmentation would unlock the Commission’s energy savings goals, improve California’s building stock, and result in tangible benefits for customers of the highest need – all achieved at the same level of funding already authorized by the Commission.

At times, the current *ex ante* processes seem to confuse—and equate—the *volume* of compliance work associated with the *accuracy* of the savings claims. BayREN and 3C-REN envision collaboratively working together to effectively deploy energy efficiency in California. Energy Division consultants seemingly prolong the review process and deviate from expected norms of measurement and verification (M&V), despite being among highly qualified PA-hired technical experts, with Energy Division developing new rules and requirements of questionable utility, and certain and specific administrative burdens.

One example is a recent change regarding review of “deemed” (non-custom) savings. On October 25, 2023, Energy Division issued guidance to subject deemed measures to burdensome Preponderance of Evidence (POE) requirements (Deemed POE Guidance).⁹ While this change was contemplated in Resolution E-5115,¹⁰ Energy Division did not follow any meaningful stakeholder engagement to arrive at this determination, only including it once on a standing meeting agenda.

⁹ Preponderance of Evidence Requirements for Accelerated Replacement of Deemed Measures, Commission Energy Division, issued October 25, 2023. Available at: <https://cedars.sound-data.com/deer-resources/deemed-measure-packages/guidance/file/3060/download>.

¹⁰ Resolution E-5115 at 32, Ordering Paragraph 10.

There appears to have been no consideration of whether the guidance proposed was cost-effective or appropriate. Further, the guidance issued was, notably, not provided to BayREN or 3C-REN.

A streamlining of existing processes is consistent with the trajectory of the Commission: do more with what you have. When the Commission recently denied Southern California Edison’s Building Electrification Application earlier this month, the Commission underscored the need to “fully leverage[] existing programs to produce the most benefits at the least cost to the ratepayers.”¹¹ Here BayREN and 3C-REN propose to streamline processes to decrease administrative costs and increase project support and deployment costs.

III. THE MULTIFAMILY SECTOR POSES A CHALLENGING AND CRITICAL OPPORTUNITY FOR ENERGY EFFICIENCY

Over one third of California residents reside in multifamily housing.¹² However, this critical housing stock poses unique and well-documented challenges, including: “[h]istorical disinvestment, ... lack of upfront capital for building upgrades, limited opportunities to finance retrofits, tight cashflows, limited staff capacity and expertise, and other constraints.”¹³ This in turn results in inadequate energy efficiency to address the needs of their residents: lower bills and greater health, safety, and comfort. This underserved area results in statewide impacts: higher energy usage, higher GHG emissions, and lagging building and transportation electrification. The recently issued ACEEE Study, which focuses on building performance standards (BPS) for multifamily buildings starkly finds:

¹¹ D.24-01-XXX (final issuance pending) at 19.

¹² Berkland, Stephanie, Abhijeet Pande, and Mirthra Moezzi. 2017. Cultural Factors in Energy Use Patterns of Multifamily Tenants. California Energy Commission. Publication Number: CEC-500-2018-004. Available at: <https://www.energy.ca.gov/publications/2018/cultural-factors-energy-use-patterns-multifamily-tenants>.

¹³ ACEEE Report at 1.

Our research aimed to identify strategies that states, cities, and supporting stakeholders were employing to advance equitable outcomes regarding BPS. However, one clear trend emerged both in our literature review and case study interviews: Greater levels of technical and financial assistance are needed.¹⁴

BayREN and 3C-REN identify these challenges to provide context for their requested changes to Commission processes as set forth in this Motion.

A. Nearly Half of Californians Live in Rented Housing; the Vast Majority of Multifamily Housing Serves Renters

Forty-four percent of all California residents live in residences that are rented.¹⁵ Of multifamily housing, 86% of multi-unit housing with 2-4 units are rented and 90% of multi-unit housing with five or more units are rented.¹⁶ Further, these properties are a critical source of housing for lower-income Californians. Over two-thirds of California households below 200% of the Federal Poverty Line (FPL) are renters; nearly half of California households with incomes between 200-300% of the FPL are renters.¹⁷ Renters in the multifamily segment may rent within a rental-only building or they may rent an individual unit within an otherwise owner-occupied building, such as a condominium.

Lower-income individual families do not *exclusively* live in low-income housing. In fact, they cannot:

Affordable housing is an important component of single and multifamily housing. However, California lacks more than a million affordable homes to meet the needs of low-income residents. Thus, the competition for existing affordable housing is significant. Furthermore, owners of existing affordable housing are often prevented

¹⁴ ACEEE Report at 22.

¹⁵ California Budget and Policy Center, *Issue Brief: California's 17 Million Renters Face Housing Instability and Inequity Before and After COVID-19*, January 2021, at 1. Available at: <https://calbudgetcenter.org/app/uploads/2021/01/IB-Renters-Remediated.pdf>.

¹⁶ Public Policy Institute of California, *Multi-unit Housing Is Becoming More Common, but Has Low Homeownership Rates*, August 2023, Available at: <https://www.ppic.org/blog/multi-unit-housing-is-becoming-more-common-but-has-low-homeownership-rates/>.

¹⁷ *Id.* at 5.

from taking on new debts to finance upgrades, making improvements inaccessible.¹⁸

These renters and property owners face significant challenges in undertaking energy efficiency projects due to the split incentive, meaning, the interests of the property owners are not aligned with the interests of renters. Renters are often responsible for paying utility bills but the choice whether to pursue energy equipment upgrades is beyond their control, even though they could benefit greatly from the associated bill savings, improved comfort, and other advantages of energy efficiency.

B. Many Multifamily Property Residents—Whether Renters or Owners—Are Housing Burdened

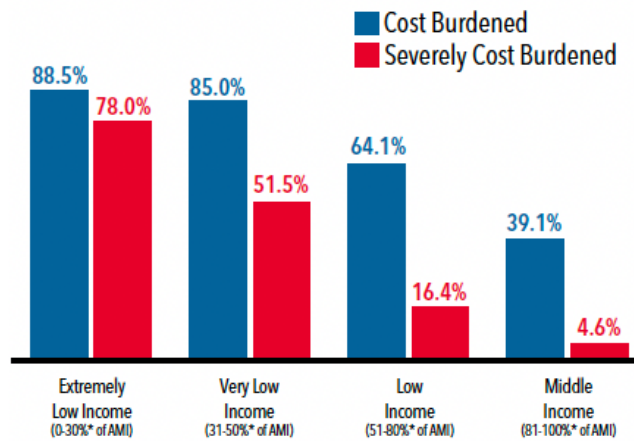
It is not simply that Californians *live* in multifamily housing which makes the sector a priority. Californians—whether renters or owners—face significant housing burdens, particularly lower- and middle-income Californians, many of whom live in multifamily properties. According to California Air Resources Board (CARB) data, over 45% of households—including all income levels—spend over 35% of their income on housing.¹⁹ According to Census Bureau data, housing burdens are borne most acutely by California’s low-and middle-income households. Data from the American Community Survey (ACS) Public Use Microdata Sample (PUMS)²⁰ is set forth below and defines Cost Burdened as households spending over 30% of their income on housing, and defines Severely Cost Burdened as households spending over 50% of their income on housing:

¹⁸ *California Building Decarbonization Assessment*, California Energy Commission (CEC), Final Commission Report, August 2021 (CEC Building Decarbonization Assessment), at 121, citation omitted. Emphasis added.

¹⁹ SB 150 Dashboard - Tracking Progress - Sustainable Communities, California Air Resources Board (CARB), accessible at: <https://ww2.arb.ca.gov/our-work/programs/sustainable-communities-program/sb-150-dashboard-tracking-progress-sustainable>.

²⁰ Graphic derived from National Low Income Housing Coalition, 2023 California Housing Profile, available at: https://nlihc.org/sites/default/files/SHP_CA.pdf.

HOUSING COST BURDEN BY INCOME GROUP



Source: 2023 California Housing Profile²¹

These realities place energy efficiency improvements in multifamily buildings in a unique position warranting focused attention of the Commission and PAs. Specifically, serving low- and middle-income Californians pose the “double whammy” of the residents being housing burdened—meaning less money to expend on energy efficiency—and the structural challenges which face multifamily properties more generally, including: “lack of upfront capital for building upgrades, a lack of time and technical capacity to complete energy efficiency improvements, [...] the split incentive [...] and a history of disinvestment and racial injustice mean[ing] buildings in disadvantaged communities are more likely to be of poor quality.”²²

²¹ 2023 California Housing Profile, National Low Income Housing Coalition, Available at: https://nlihc.org/sites/default/files/SHP_CA.pdf.

²² ACEEE Report at 4.

C. Split Incentives Are the Greatest Barrier to EE Retrofits for Multifamily Housing

The problem of split incentives—meaning the costs and benefits for the property owner, landlord, or building manager are not aligned with the costs and benefits of the tenant or resident—is well-known and well-documented:

Split incentives are the most significant barrier to energy retrofits in multifamily housing units. [...] Tenants often pay for the operation of major energy-consuming equipment. Because the building owner often does not pay the energy costs of the home, they typically have no incentive to replace inefficient equipment before burnout. This issue furthers energy burden in low-income households, 60 percent of which are renters.²³

The Commission’s 2023 Energy Efficiency Potential and Goals Study adopted in D.23-08-005 (P&G Study) identifies the split incentive as one of the top barriers to adoption, leading to a significant gap between actual energy efficiency adoption and what would be expected if the possible cost and environmental savings were fully accounted for.²⁴

D. Energy Efficiency Challenges Persist in Owner-occupied Multifamily Housing, Including Decision-making, Financing, and Technical Knowledge

Multi-owner or owner-occupied (e.g. condominium, co-op) multifamily housing is similarly important. These multifamily properties are 21% less expensive than single family properties in California, providing greater access to housing for lower-income Californians.²⁵

²³ CEC Building Decarbonization Assessment at 118-19, citations omitted.

²⁴ “High observed implied discount rates for EE purchases indicated a range of market barriers and risk factors influence adoption beyond just the consumer time value of money such as lack of access to capital, liquidity constraints, split incentives, hassle, information search costs, and behavioral failures. The difference between the consumer’s implied discount rate and their risk-adjusted time value of money is often referred to as the efficiency gap. Research has explained the discrepancy between the implied discount rate and the risk-adjusted time value of money as due to market barriers facing the EE industry.” P&G Study at H-1, emphasis added, citations omitted.

²⁵ Redfin Data Center, available at: <https://www.redfin.com/news/data-center/>.

However, barriers to undertaking energy efficiency projects persist, even in owner-occupied multifamily housing. These challenges include collective action challenges and homeowners' association (HOA) or condo association processes, among others.

A joint report of the Joint Research Centre (JRC), the European Commission's science and knowledge service, has extensively analyzed and documented these challenges.²⁶

Decision-making processes in multi-owner properties generally have lower voting requirements for maintenance efforts. However, for major renovations, such as a more comprehensive energy efficiency upgrade, these voting and decision-making points require a greater voting share of the owners, which may be difficult to achieve; these decisions are particularly challenging in buildings with large income disparities among owners.²⁷ Not all owners are similarly situated, including those who rent out their owned unit.

In multi-owner buildings, financing can be a significant additional challenge, particularly where there are not financial structures in place to allocate costs and responsibilities to co-owners. For example, the lack of or a weak homeowner association or community prevents buildings in need of electrification or energy efficiency upgrades from being renovated "as there is no legal

²⁶ Economidou M et al, *Energy efficiency upgrades in multi-owner residential buildings - Review of governance and legal issues in 7 EU Member States*, EUR 29094 EN, Publications Office of the European Union, Luxembourg, 2018, ISBN 978-92-79-79347-9, doi:10.2760/966263, JRC110289 (EU Multi-owner Report). Available at: https://publications.jrc.ec.europa.eu/repository/bitstream/JRC110289/energy_efficiency_upgrades_in_multiowner_apartment_buildings_final.pdf.

²⁷ EU Multi-owner Report at 56:

Energy efficiency upgrades would typically fall under major renovation/improvement work, which is typically associated with stricter majority rules. In several cases, this would require unanimity which could be extremely difficult to obtain especially in buildings with large income disparities among owners.

entity to organize the individual owners and enforce their obligation to pay their share of the debt.”²⁸

Further, multi-owner buildings’ associations are often led by residents—laypeople—who may have limited knowledge of the property’s central systems or building science in general.

Decision making related to energy efficiency upgrades in condominiums is typically led by a number of co-owners with non-technical background. They may not have all the knowledge, awareness, skills or time that would be required to take well-informed decisions and initiate or oversee what can be complex renovation projects.²⁹

While this lack of technical expertise may be complemented by a savvy building manager, the manager may not be interested in or incentivized to undertake a major renovation such as a whole-building energy efficiency retrofit. In fact, multi-owner properties which “adopt a hands-off approach by fully delegating management responsibilities to [third party managers] deliver lower payoffs in the provisions of public goods,” such as energy efficiency.³⁰

E. Potential Multifamily EE Program Customers Require Long Lead Times and May Offramp if Energy Efficiency Processes Are Too Time Consuming

The CEC Building Decarbonization Assessment identifies another key barrier faced by the multifamily sector: timing.

Owners and operators of multifamily and commercial properties seeking to perform decarbonization retrofits must plan well in advance to make it happen. Given competing needs in a building or the lack of awareness or benefits from energy programs, energy retrofits may be overlooked or determined to be too time-consuming. Moreover, building owners need assurances that financial incentives

²⁸ EU Multi-owner Report at 55.

²⁹ EU Multi-owner Report at 56.

³⁰ Chu, F.-N., Chang, C.-O., & Sing, T. F. (2013). Collective Action Dilemmas in Condominium Management. *Urban Studies*, 50(1), 128–147, at 128. Available at: <http://www.jstor.org/stable/26144191>.

will be available to reimburse upgrade expenses before committing to move forward.³¹

The timing barrier is particularly acute for energy efficiency projects in low-income multifamily buildings:

In low-income developments, “resyndication” is a process that requires owners of affordable housing properties to reapply for tax credits after an initial 15-year period. It affords owners an opportunity to make many building upgrades. According to a recent Energy Efficiency for All study, building owners need one to two years of planning and preparation for building upgrades before resyndication. Since taking on debt is often not possible for these owners, debt-free options must be on the table, or the owner may continue to delay improvements. Setting up a program or resource through local or state offices, a one-stop shop, for building owners to use for scheduling upgrades, layering incentives, or arranging audits would streamline the process for residential and commercial building owners and tenants.³²

When these timelines are further pushed—for example, a 2- to 8-month delay resulting from Energy Division’s custom *ex ante* processes—projects may not be pursued at all.

F. The Result of the Barriers Facing Multifamily Buildings Is Poor Energy Efficiency Performance and Reliance on Equipment Beyond Its Useful Life

These factors point to the importance of multifamily properties on a housing basis alone. However, added to these factors—and as a result of many of these factors—multifamily properties’ efficiency and comfort lag far behind buildings built to current Title 24 code. As found by Rocky Mountain Institute (RMI) in a recent multifamily energy efficiency report:

California has approximately 3.2 million multifamily units, more than half of which were built before 1978 when the state’s Title 24 building code for energy efficiency and electric-ready standards went into effect. Many of these older buildings are performing poorly, provide low levels of thermal comfort for tenants, may have

³¹ CEC Building Decarbonization Assessment at 111, emphasis added.

³² CEC Building Decarbonization Assessment at 111, citations omitted, emphasis added.

indoor air quality issues and significantly contribute to the state's ongoing greenhouse gas emissions.³³

The result of these barriers include: lower efficiency, lower resident comfort, and reliance on water heating and space heating and cooling equipment beyond their useful lives, rather than proactive energy management. For example:

Data from the last Residential Energy Consumption Survey showed that renters often rely on water heating and space heating equipment beyond the useful life, likely as a result of this split incentive. Thirty-eight percent of renters use a water heater that is more than 10 years old compared to 36 percent of homeowners, and 56 percent use space heating equipment that is more than 10 years old compared to 49 percent of homeowners. There are significant efficiency gains and emission reductions to realize by retiring older equipment and replacing it with heat pump water heaters and heat pump space conditioning.³⁴

As a result of the specific challenges of serving this sector—including split incentives of renters and owners, and collective action hurdles—multifamily property buildings are an underserved segment of the Commission's energy efficiency portfolio. Burdensome Commission processes which fail to account for the specific needs and realities of the multifamily sector put energy efficiency measures further out of reach for these renters and owners.

Some challenges of the multifamily sector lay outside of the Commission's and a PA's control, such as the split incentive or collective action challenges. Other challenges may present through the PA's program design or the Commission's processes regarding these programs; a PA's multifamily program design and the Commission's processes, often set by Energy Division, are inexorably tied.

³³ *Energy Service Agreements for Deep Efficiency and Electrification Retrofits of Affordable Multifamily Housing in California*, RMI, July 2023 (RMI Report) at 4.

³⁴ CEC Building Decarbonization Assessment at 119, citations omitted.

This Motion endeavors to simplify Commission processes for energy efficiency projects in multifamily buildings to ensure both Commission oversight and efficient deployment of essential energy efficiency measures in this segment.

IV. BAYREN AND 3C-REN REQUEST THAT THE MULTIFAMILY SECTOR BE DESIGNATED AS HARD-TO-REACH (HTR)

As described in the previous Section, multifamily properties are a critical segment in the energy efficiency space. These buildings not only have significant GHG impacts, but they also have significant comfort, health, and financial impacts on the families and individuals living in this housing. They serve largely lower- and middle-income tenants, and due to the significant barriers of the sector, including split incentives, these buildings lag behind others in adoption of energy efficiency measures. Transportation electrification will result in many buildings needing substantial energy-related retrofits; this opportunity should not be squandered.

However, existing definitions of hard-to-reach (HTR) fail to capture most multifamily properties and the critical role of multifamily housing on everyday Californians and GHG emissions provide strong justification for closing this gap. BayREN and 3C-REN request that the HTR definition be modified as set forth on Attachment A, specifically to include the following language:

Multifamily properties represent critical housing supply for lower- and middle-income Californians and is not restricted by any one geographic scope. The sector faces split incentive and other significant barriers resulting in higher emissions and lower health, comfort, and safety. A multifamily program is considered to serve hard to reach customers if the program design prioritizes those who have been least served and/or hardest to reach.

This language captures the concrete and documented need to affordable multifamily housing.³⁵ This Motion sets forth the “concrete data and analysis” required by the Commission under D.23-06-055 to effectuate this change in the HTR definition.³⁶ The proposed language further comports with the Commission’s guidance the equity segment to “prioritize those who have been least served and/or hardest to reach.”³⁷

A. Multifamily Housing’s Critical Role, Challenging Attributes, and Under-deployment of Energy Efficiency Strongly Support HTR Designation

As documented above, the unique attributes of multifamily housing strongly support HTR designation: (1) multifamily primarily serves renters and these renters are more likely to be low- and middle-income; (2) multifamily residents are housing burdened; (3) rented multifamily properties face challenges with split incentives between landlords and tenants; (4) multi-owner (e.g. condominium) multifamily properties face decision-making, financing, and technical challenges; and (5) long lead times for planning, financing, and construction result in property owners simply not pursuing energy efficiency. The result is an inefficient multifamily building stock that lack adequate GHG reduction measures and often do not meet the health, safety, and comfort needs of their residents.

³⁵ See, ACEEE Report at 1, defining affordable housing as:

Affordable housing in this paper refers to both subsidized and unsubsidized affordable housing. *Subsidized affordable housing* refers to publicly or privately owned multifamily buildings that receive government subsidies to keep rents at an affordable rate. *Unsubsidized (or naturally occurring) affordable housing* refers to multifamily housing that does not receive subsidies but has rents affordable to low- and moderate-income households due to the buildings’ characteristics (such as location, condition, etc.).

³⁶ D.23-06-055 at 54.

³⁷ D.23-06-055 at 44.

As currently drafted, the Hard-to-Reach criteria provided under D.23-06-055 fail to capture most multifamily properties and residents who face challenges in accessing the benefits of energy efficiency. This results in an ‘unserved’ customer population where non-cost-effective programs cannot operate, and REN programs cannot serve. BayREN and 3C-REN address each criterion in turn, and refer to the factual findings set forth in the prior subsection of this motion. BayREN and 3C-REN recommend amendments to the definition of HTR which are set forth below and in Attachment A.

B. The Geographic Criterion Excludes Over 85% of California’s Multifamily Housing

The vast majority of multifamily housing is in greater urban areas and is not located in rural or tribal locations. Yet, the Commission currently defines the primary HTR geographic criteria as follows:

Customers or customer premises in areas other than the United States Office of Management and Budget Combined Statistical Areas of the San Francisco Bay Area, the Greater Los Angeles Area and the Greater Sacramento Area or the Office of Management and Budget metropolitan statistical areas of San Diego County.³⁸

The urban areas excluded from this definition represent over 85% of California’s multifamily housing,³⁹ meaning that 85% of multifamily units are explicitly excluded from the geographic criteria for HTR unless they meet the significantly narrower criteria of “[c]ustomers or customer premises in disadvantaged communities, as identified by the California Environmental Protection Agency pursuant to Health and Safety Code Section 39711.”⁴⁰ This is inadequate. Wide

³⁸ D.23-06-055 at 53.

³⁹ E-5 Population and Housing Estimates for Cities, Counties, and the State, State of California Department of Finance. Available at: <https://dof.ca.gov/forecasting/demographics/estimates/estimates-e5-2010-2021/>.

⁴⁰ D.23-06-055 at 53.

swaths of multifamily housing are simply excluded by the “broad brush” of the greater statistical areas that is not adequately compensated for with the re-inclusion of DACs. In addition, multifamily buildings are not uniformly low-, middle-, or high-income. Local jurisdictions across California—143 jurisdictions as of November 2021⁴¹—have adopted inclusionary housing programs which require including low- or middle-income housing within otherwise market-rate buildings. These specifically impact multifamily buildings as often the inclusionary housing requirement is triggered when a certain number of units are to be built.⁴²

C. The Language Criterion for Multifamily Properties Is Difficult to Ascertain; It Also Fails to Reach Key Hard-to-Reach and Housing Burdened Groups

The HTR criteria similarly includes a criterion for language: “Language criterion – Primary language spoken is other than English.”⁴³ In the case of multifamily properties, this criterion is not straightforward. Should a PA look to the language spoken by the building manager? The building owner? The tenants? If so, how and what percentage? While PAs such as BayREN and 3C-REN have developed multi-language marketing catering to Arabic-, Chinese-, Spanish-, Tagalog-, and Vietnamese-speakers, a building owner would likely not be able to certify all of the primary languages spoken in the tenant units.

Further, this entirely excludes African Americans which may speak English as a primary language. Black Americans face the single highest housing burden by ethnic group in California.⁴⁴

⁴¹ Searchable Database of Local Inclusionary Housing Programs, California Coalition for Rural Housing, available at: <https://www.calruralhousing.org/maps-and-tools>.

⁴² See, e.g., San Francisco Inclusionary Housing Program triggered at 10 or more units. Available at: <https://www.sf.gov/information/inclusionary-housing-program>.

⁴³ D.23-06-055 at 53.

⁴⁴ Levin, Matt, *Black Californians’ Housing Crisis, by the Numbers*, KQED and CalMatters, June 20, 2020. Available at: <https://www.kqed.org/news/11825550/black-californians-housing-crisis-by-the-numbers>.

Black Americans have been systemically oppressed by the United States—and California specifically—from the start. On June 29, 2023, the Task Force to Study and Develop Reparations Proposals for African Americans issued its over 1,000-page report to the Legislature (Reparations Report).⁴⁵ It exhaustively documents African American enslavement in California, disenfranchisement, segregation, and other excruciating oppressions. This, by design not happenstance, has resulted in African Americans having a lower likelihood of homeownership and higher likelihood of living in pollution-burdened communities.⁴⁶ Further, nationwide 7.5% of African Americans but only 2.8% of whites live in substandard housing.⁴⁷ In fact:

Research indicates that African Americans are more likely to live in older, energy inefficient homes with structural deficiencies, outdated appliances and faulty energy systems. These conditions lead to a disproportionate burden of energy insecurity, defined as “the inability to adequately meet household energy needs” among African Americans across the economic spectrum.⁴⁸

While language is an important indicator of whether a customer or sector is hard-to-reach, it is difficult to address in the multifamily sector and leaves behind African Americans. For these reasons, the language criteria fails to meet the needs of the multifamily sector.

⁴⁵ California Task Force to Study and Develop Reparations Proposals for African Americans, *Final Report*, June 29, 2023. Final Report available here: <https://oag.ca.gov/ab3121/report>.

⁴⁶ Reparations Report at 286:

Historically, federal public housing was explicitly created to segregate African American Californians into areas with greater pollution burdens due to immediately adjacent polluting sources.

⁴⁷ Reparations Report at 283.

⁴⁸ Lewis J, Hernández D, Geronimus AT. *Energy Efficiency as Energy Justice: Addressing Racial Inequities through Investments in People and Places*. *Energy Effic*. 2019 Mar;13(3):419-432. doi: 10.1007/s12053-019-09820-z. Epub 2019 Nov 6. PMID: 33737861; PMCID: PMC7966972. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7966972/>.

D. Current HTR Small Business Criteria Do Not Squarely Fit Multifamily Properties

Multifamily properties share certain similarities with small businesses, such as the common area energy systems or common areas of the building being small business-like, and the utility structure generally being one (or several) common meters and several (or many) individual unit meters.⁴⁹ However, the small business criteria in determining whether a property is HTR does not meet the needs of the multifamily sector. The small business criteria are:

For small business added criteria to the above to consider:

- Business Size – 25 or fewer employees and/or classified as Very Small (Customers whose annual electric demand is less than 20 kilowatt (kW), or whose annual gas consumption is less than 10,000 therm, or both), and/or
- Leased or Rented Facilities – Investments in improvements to a facility rented or leased by a participating business customer.⁵⁰

With regards to the Business Size criterion, what would determine the “business size” of a property? It could be considered the property management company, the property itself (often an LLC or other type of legal corporation), but generally a single property may have no onsite staff or only one or two. In most cases there is simply not a “business” being run at the location, especially if the property has few units.

With regards to the Leased or Rented Facilities criterion, the analysis entirely breaks down. Even the common areas are not “rented or leased” so improvements to common facilities, such as water and space heating would not be considered a facility rented or leased.

⁴⁹ Non-IOU PAs face challenges in getting data on the unit level as property owner would simply not be able to request, and certainly not demand, that residents sign a data access form.

⁵⁰ D.23-06-055 at 53.

E. Current HTR Residential Criteria Similarly Fail to Address the Multifamily Sector

The HTR criteria add specific considerations for the residential sector, which, while they refer to multifamily properties specifically, they do not actually capture the needs of the multifamily sector. These criteria are:

For residential added criteria to the above to consider:

- Income – Those customers who qualify for the California Alternative Rates for Energy, Energy Savings Assistance, or the Family Electric Rate Assistance Programs, and/or
- Housing Type – Multi-family and Mobile Home Tenants (rent and lease).⁵¹

With regards to income, for non-IOU PAs there are few opportunities to determine whether the residents—or any segment of residents—qualify for or receive assistance through California’s low-income programs. BayREN and 3C-REN do not have access to CARE/FERA enrollment data and income verification documentation is extremely onerous to compile. Moreover, multifamily programs such as those offered by BayREN and 3C-REN are whole building programs that interact with and offer incentives to property owners. Program staff typically do not have direct contact with individual tenants, who may not even be aware that upgrades are being made if the equipment is located outside their dwelling unit. Gathering this information from multifamily renters is administratively time-consuming and costly, as well as invasive to residents who do not have the decision-making power to choose whether or not the property participates in the program and will not receive an incentive payment in exchange for providing their personal information. While PAs have used strategies to target deed-restricted buildings, as noted above, there are far more low-income individuals than units of low-income housing, leaving many low-income residents of

⁵¹ D.23-06-055 at 53.

multifamily buildings unaddressed. Further, with regards to housing type, while multifamily (rented or leased) is listed, it fails to capture multi-owner multifamily buildings, the owners of which may occupy *or* rent out.

F. Program Design Should Determine Whether a Multifamily Property Serves HTR Customers

The Commission has expressed concern for “broadening the definition of ‘hard to reach’ or defining ‘underserved’ overly broadly because a key motivation for creating the equity segment is to prioritize those who have been least served and/or hardest to reach.”⁵² However, by too narrowly defining these terms, much of the multifamily sector which is hard to reach and underserved is not considered “hard to reach” or “underserved.” The multifamily sector is so diverse that a narrow definition simply does not capture the various sector subtypes, each of which pose unique energy efficiency challenges.

As documented by the Multifamily Subcommittee of the California Home Energy Retrofit Coordinating Committee, the multifamily sector has five key subsector factors: (1) high rise or low rise; (2) affordable or market rate; (3) rental or condo or co-op; (4) residential or common area or mixed use; and (5) central or individual systems.⁵³ These relate to the myriad combinations of building ownership, unit ownership, and physical configurations that the sector presents. Further, a “customer” designation is often not appropriate in the multifamily setting as the program participant (for example, a building owner) is not necessarily the same as the customer (which

⁵² D.23-06-055 at 44-45.

⁵³ *Improving California’s Multifamily Buildings: Opportunities and Recommendations for Green Retrofit and Rehab Programs*, Final Report, April 11, 2011 (MF HERCC Report), at 10. Available at: https://chpc.net/wp-content/uploads/2015/11/26-MF-HERCC_Multifamily-Program-Design_Final_04112022.pdf.

could exclude a renter) or the beneficiary of a project (such as a common system upgrade benefitting unit residents).

For these reasons, BayREN and 3C-REN assert that a broad HTR definition apply to the multifamily sector as a whole is appropriate, so long as the program design meets the intent of the equity segment, prioritizing those who have been least served and/or hardest to reach.

V. THE COMMISSION SHOULD APPLY THE DIRECT-TO-DECISION FRAMEWORK TO ALL MULTIFAMILY PROGRAMS AND PROJECTS

The Direct-to-Decision pathway provides a simplified process for energy efficiency projects such that the onerous ex ante review processes would be avoided and would result in: (1) an accelerated replacement baseline appropriate to the multifamily sector; and (2) self-certification Preponderance of Evidence (POE) requirement. This pathway has been used for the small business sector, specifically:

Energy efficiency program participants meeting the requirements of a small-sized business may use an accelerated replacement measure type with an existing equipment baseline for custom measures except new construction and capacity expansion. The minimum requirement for project-level preponderance of evidence must include evidence of customer eligibility for program participation based on meeting the small-sized business criteria and evidence of equipment viability for the remaining life claimed for the first period savings. Evidence of equipment viability means evidence that the equipment could and would have stayed in operation for the remaining life claimed for the first period savings.⁵⁴

This approach should be applied in the multifamily sector context, which would align the baseline of multifamily buildings with the realities of the multifamily sector and would avoid the significant challenges of currently applied POE documentation which multifamily building owners may simply not have. Proposed language to effectuate this change is set forth on Attachment B.

⁵⁴ Resolution E-4939 at 49-50.

A. Assuming an Accelerated Replacement Baseline Is Appropriate for the Multifamily Sector

Section III above delineates the key barriers to adoption of energy efficiency measures in multifamily properties. As noted therein, these challenges—including but certainly not limited to the challenge of the split incentive—result in poor building performance, low levels of thermal comfort, and poor indoor air quality. These buildings rely on water heating and air heating and cooling equipment beyond their useful lives. Older multifamily properties were built without the benefit of Title 24, and property owners often will avoid measures that would trigger current code compliance requirement.

For these reasons, it is appropriate to apply the same accelerated replacement baseline to multifamily sector as has been applied to the small business sector. Specifically, the multifamily sector definition would “qualify a class of customers at a Program level, not a project level.”⁵⁵

B. Like the Small Business Sector, the Multifamily Program Participants Should Self-Certify Preponderance of Evidence (POE)

Further, the Commission should use the same self-certification POE requirement applied to small business programs to multifamily programs. This aligns the POE requirement with good regulation practices as well as the realities of what documentation a multifamily building owner or customer may possess.

As originally envisioned, Preponderance of Evidence (POE) documentation would not be burdensome. In fact, as specifically stated in Resolution E-4818:

We note that what is envisioned here is not necessarily a time-consuming investigation for each site. If the customer type and measure pairing is indicative of accelerated replacement then a simple verification of customer and measure type is all that would be needed to substantiate the blended rate savings claim. Of course, the regular requirements including customer account number, address, date, measure, incentive and other details that are normally required would continue to

⁵⁵ Resolution E-4939 at 44, Ordering Paragraph 17.

be required, and ex-post evaluation will be used to confirm the appropriateness of ex-ante assumptions regarding baseline.⁵⁶

However, the burden of POE documentation as envisioned and the actual burden of POE documentation differ greatly. POE documentation, which is now also applicable to deemed projects, requires up to approximately eight (8) hours of implementer or consultant time to prepare. This does not include the prior additional time that Technical Assistants spend documenting the influence via various email communications with customers that is submitted for CPR.

While applying the POE requirement to projects with custom measures is not new, applying the POE requirement to deemed measure projects is new. On October 25, 2023, Energy Division issued guidance to subject deemed measures to burdensome POE requirements. The sole public process was one agenzized item in a recurring PA meeting. There was no analysis of whether this approach was cost effective. Further, notably, neither BayREN nor 3C-REN received a copy of this guidance letter.

Now, pursuant to Resolution E-5115 and Energy Division's POE guidance for deemed measures, any incentives in excess of \$25,000—whether based on custom or deemed measures—require the PA to demonstrate equipment viability by providing operating data, current and past maintenance and repair history or records, reliability history and issues, and other elements. Multifamily owners and managers simply do not keep this kind of historical information as a standard practice and therefore are unable to provide the information upon request. Further, some of this documentation simply does not have the same applicability in the multifamily setting, such

⁵⁶ Resolution E-4818 at 44.

return on investment (ROI) and cost effectiveness in a multifamily/split incentive setting.⁵⁷ 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 Commission has an existing alternative to the burdensome and sometimes inapplicable POE requirements as applied to multifamily projects. The Commission has provided an exception to these requirements under “Direct-to-Decision” treatment for small businesses under Resolution E-4939:

The purpose of developing the small-sized business customer definition is to pre-define a criterion that may be used to qualify a class of customers with a “Direct-to-Decision” accelerated replacement treatment. The “Direct-to-Decision” treatment means that a qualified measure or project would default to an accelerated replacement measure type with an existing conditions first baseline without any further preponderance of evidence requirement.⁵⁸

This Direct-to-Decision status should be similarly applied to the multifamily sector. As evidenced above, multifamily buildings lag behind other sectors in adoption of energy efficiency, resulting in lower efficiency, lower resident comfort, and reliance on heating and space equipment beyond their useful lives. Multifamily property owners do not have the funding, knowledge or time to evaluate building upgrades scopes of work and will not voluntarily undertake upgrades without the technical assistance and rebates provided by programs, therefore Multifamily

⁵⁷ 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.

⁵⁸ Resolution E-4939 at 29.

programs are inherently motivating accelerated replacement. Analysis of free ridership or other adjustments should occur on a population level and be reflected in a program's net to gross (NTG).

VI. *EX POST* REVIEW PROCESSES SHOULD REPLACE CUSTOM PROJECT REVIEW (CPR) EX ANTE PROCESSES WHICH HINDER THE DEPLOYMENT OF ENERGY EFFICIENCY MEASURES IN THE MULTIFAMILY SECTOR

In BayREN and 3C-REN's experience, many deep retrofits of multifamily buildings cannot be accomplished with deemed savings alone. BayREN and 3C-REN have undertaken an extensive process to identify any and all opportunities to use a deemed approach to savings claims, there are still significant measure opportunities which do not have a workpaper or approved methodology other than the custom approach. Measures for which a custom approach is still required includes windows, lighting upgrades, crossover repairs, electrification measures that do not have existing conditions matching the workpaper baselines such as steam, hydronic heating, or proposed measures that do not match workpaper measure conditions such as VRFs.

However, the custom process results in unacceptably long timelines due to Energy Division Review processes and jeopardizes the likelihood that the customer will continue to pursue program participation. As a result, in cases where deemed savings are sufficient for the project to move forward, BayREN and 3C-REN—and likely many other PAs—simply ignore the savings of actually-installed custom measures to avoid potentially losing customer's program participation due to the CPR process becoming overly burdensome to participation. As a result custom projects, which could result in deep energy efficiency retrofits, either are not pursued or the savings that result from them are not processed through the CPR process or reported to the Commission.

A. Multifamily Projects Should Be Evaluated Through the *Ex Post* Commission Processes

The Commission's *ex post* review processes document "evaluation-confirmed (*i.e.* realized) energy efficiency program and portfolio effects."⁵⁹ This means that the portfolio administrator (PA) and the Commission's Energy Division evaluate a project and/or program, comparing energy usage changes along with other market effect measurements, reducing a PA's claimed energy savings to address issues of free ridership and program influence.

During the project development phase and until incentives are granted to a customer, the PA undertakes critical work and analysis, notwithstanding the exemption from the *ex ante* review process. This work and documentation may include:

- Technical review and assessment tasks leading up to the rebate reservation stage;⁶⁰
- Post-rebate reservation tasks leading up to rebate payment;⁶¹
- Compiling the deemed workpaper and/or custom measure documentation for Commission Reporting purposes, as applicable to the project scope; and

⁵⁹ California Energy Efficiency Evaluation Protocols: Technical, Methodological, and Reporting Requirements for Evaluation Professionals, Commission, April 2006 (EM&V Protocols) at 2.

⁶⁰ This generally includes project eligibility analysis, scope development, energy modeling, site assessment to confirm existing conditions, measure and contractor recommendations, support with bid reviews, additional technical analysis such as domestic hot water data monitoring, electrical capacity feasibility study depending on the scope of work and compiling all documentation for rebate reservation. The scope is further QA/QC'ed by the PA to confirm eligibility prior to providing rebate reservation approval.

⁶¹ This generally includes review of technical submittals, coordination meetings with owners and/or contractors to discuss technical aspects of the project and track progress, conduct partial and final verification site visits, and compiling close-out documentation such as invoices, permits and updating the energy model to match the final installed conditions and to re-confirm program eligibility. The final scope and documentation is QA/QCed by the PA prior to approving the rebate claim request from the owner, and sending out the rebate check.

- A Customer Affidavit for self-certification POE documentation.⁶²

In fact, a project or program utilizing *ex post* review has a *lower* NTG than those evaluated under the Commission's *ex ante* custom review processes. This is in part as a result of the *ex ante* process attempting to peer into the hearts of individual participants: Is this individual participant a free rider? Would they have undertaken this project anyway? For projects subject to *ex post* review, this analysis of free ridership is evaluated on a population basis.

Notwithstanding this expected lower NTG, a program could have a higher Total Resource Cost (TRC) or Program Administrator Cost (PAC) ratio as a result of fewer ratepayer dollars being expended on onerous *ex ante* requirements. Additionally, program staffing resources expended on these onerous requirements could be better directed at supporting projects and would likely expand the reach of programs serving the multifamily sector as PAs would not be deterred by the Energy Division's CPR process—and now the Deemed POE requirements—of *ex ante* review.

This *ex post* review process is consistent with the Commissions treatment outside of the energy efficiency space, such as for the IOUs' and CCA's demand response programs and other demand-side programs which allow for easy enrollment and payments for demonstrated savings.

⁶² In Resolution E-5115 (at 16), the Tier 2 Working Group developed, and Cal Advocates proposed revisions to a customer affidavit resulting in the following language:

I, (name), hereby certify that I am authorized to make this declaration as the Customer or as an authorized representative of the Customer (name). By signing below, I certify that the existing equipment being replaced is in operating condition to the best of my knowledge. I acknowledge that misrepresentation will result in a rejection of all or part of the project and that the Customer may be required to return the incentives associated with this project. I further acknowledge that misrepresentation will result in future projects submitted by the Customer being subjected to additional scrutiny and may result in Customer probation or suspension from current and future incentive programs.

While this language was not adopted, BayREN and 3C-REN urge its adoption as it reflects the result of a stakeholder process and is a statement which a multifamily property customer would be able to represent.

B. Multifamily Projects Should Be Exempted from Custom *Ex Ante* Energy Division Review Processes

Applying the custom project review (CPR) process to multifamily projects is an attempt to fit a square peg in a round hole. The CPR process is designed for energy intensive commercial, industrial, and agricultural projects, and not for multifamily residential. In fact, 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. Energy Division's CPR process results in excessive delays of 2-8 months. Further, most multifamily residential facilities do not possess the documentation the CPR process requires.

1. *The CPR Process Results in Excessive Delays*

As stated previously, customer projects pulled for *ex ante* custom project review processes result in astonishing delays of two to eight months. This is contrary to the Commission's intent regarding CPR. 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.⁶³

BayREN and 3C-REN assert that the CPR process fails to achieve this balance. Multifamily program participants are faced with unreasonable delays and requests by Energy Division for information that they may not even possess. The PAs administering multifamily programs with custom elements expend extensive implementer and consultant time to develop and provide

⁶³ D.11-07-030, Attachment B at B1, emphasis added.

information, far beyond what is reasonable, simply to meet Energy Division's requests and by default are being pushed to abandon comprehensive whole-building program approaches.

Submission Through the CMPA Portal. PAs must submit custom projects to the Custom Measure Project Application (CMPA) portal. These submissions are reviewed every two weeks. In approximately one week after the CMPA "close date" a project is either pulled or not pulled by Energy Division for review. If the project is not pulled, the project moves forward with known customer incentives. The bi-weekly CMPA uploads has a negative impact on 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 results in low customer satisfaction and jeopardizes current and future program participation.

Project Feasibility Study. BayREN's Bay AREA Multifamily Building Efficiency (BAMBE) program implementer estimates it takes approximately sixty (60) hours per project, for preparation of the Project Feasibility Study (PFS) report, and related tasks, including but not limited to compilation of supporting documentation, coordination with the customers and BAMBE Technical Assistance providers (TAs) working on the project, and internal reviews of document and energy model. As noted above, an element of this is POE documentation requirements, which were originally designed as non-burdensome.

Supplemental Data Requests. Energy Division further requests Supplemental Data Request (SDR) documentation, resulting in approximately fifteen (15) hours of additional work

per SDR. Throughout this period, the customer cannot enter into contracts, purchase equipment, or move forward with the project generally.

2. *The CPR Process Requires Information that Multifamily Customers—Particularly “Mom and Pop” Customers—May Not Have*

Multifamily buildings, particularly “mom and pop”-owned buildings, generally do not have multiple years of maintenance records and equipment replacement and procurement plans as they rarely have onsite engineers or asset managers. The probability of having this documentation for apartment end-users is even less likely. All of this is typically required for POE documentation (maintenance records, budget plans).

Some documents that are asked for through Energy Division’s supplemental data request are simply not available at the time of the request. For example, a contractor or engineer will not finalize a system design until incentives and funding have been confirmed. Additionally, project cost, in the form of contractor quotes, may not be available at the time of PFS for some projects, especially if the contractor first wants to see if the project is able to secure rebates. Pursuant to Resolution E-5115, projects receiving over \$25,000 in incentives are required to provide operating data, current and past maintenance and repair history or records, reliability history and issues, and additional documentation.

3. *Exemption from Energy Division Ex Ante Review and Disposition in the Ex Post Process Would Significantly Expedite the Project Process*

Deemed projects are already subject only to *ex post* review by Energy Division. This approach should similarly be taken with custom projects, which is appropriate as the same adjustments to savings claims (*e.g.* NTG) can, and do, happen in *ex post* review for deemed measures. In this way, PAs will be able to vastly improve the customer experience and increase deployment of energy efficiency in this lagging sector.

VII. CONCLUSION

BayREN and 3C-REN thank Assigned Commissioner Shiroma and Assigned Administrative Law Judges Fitch and Kao for their consideration of this Motion, and request that the relief requested herein be promptly addressed.

Respectfully submitted,

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ATTACHMENT A

PROPOSED REVISIONS TO HARD-TO-REACH CRITERIA

California Native American Tribes are hard to reach; our state's historical dispossession of Tribes now requires deliberate effort to overcome persistent barriers to providing energy efficiency programs and services to Tribes. California Native American Tribes are defined consistent with the Commission's Tribal Consultation Policy, and any subsequent modification(s).

Multifamily properties represent critical housing supply for lower- and middle-income Californians and is not restricted by any one geographic scope. The sector faces split incentive and other significant barriers resulting in higher emissions and lower health, comfort, and safety. A multifamily program is considered to serve hard to reach customers if the program design prioritizes those who have been least served and/or hardest to reach.

Specific criteria were developed by staff to be used in classifying a customer as hard-to-reach. Two criteria are considered sufficient if one of the criteria met is the geographic criterion defined below. If the geographic criterion is not met, then at least three (other) criteria must be met. The exception is for California Native American Tribes, who do not need to meet any additional criteria.

There are common as well as separate criteria when defining hard-to-reach for residential versus small business customers. The barriers common to both include:

Customers who do not have easy access to program information or generally do not participate in energy efficiency programs due to a combination of language, business size, geographic, and lease (split incentive) barriers. The common barriers to consider include:

- Geographic criterion –
 - Customers or customer premises in areas other than the United States Office of Management and Budget Combined Statistical Areas of the San Francisco Bay Area, the Greater Los Angeles Area and the Greater Sacramento Area or the Office of Management and Budget metropolitan statistical areas of San Diego County, or
 - Customers or customer premises in disadvantaged communities, as identified by the California Environmental Protection Agency pursuant to Health and Safety Code Section 39711.
- Language criterion – Primary language spoken is other than English.

For small business added criteria to the above to consider:

- Business Size – 25 or fewer employees and/or classified as Very Small (Customers whose annual electric demand is less than 20 kilowatt (kW), or whose annual gas consumption is less than 10,000 therm, or both), and/or
- Leased or Rented Facilities – Investments in improvements to a facility rented or leased by a participating business customer.

For residential added criteria to the above to consider:

- Income – Those customers who qualify for the California Alternative Rates for Energy, Energy Savings Assistance, or the Family Electric Rate Assistance Programs, and/or
- Housing Type – ~~Multi-family~~ and Mobile Home Tenants (rent and lease).

For the public sector, customers classified as “local government” that meet the geographic criterion above may also be considered hard-to-reach.

ATTACHMENT B

RECOMMENDED MULTIFAMILY DIRECT-TO-DECISION FINDINGS

The multifamily sector is a class of customers that are eligible for a simplified or “Direct-to-Decision” accelerated replacement treatment.

Energy efficiency program participants in the multifamily sector may use an accelerated replacement measure type with an existing equipment baseline for custom measures except new construction and capacity expansion. The requirement for project-level preponderance of evidence is self-certification of equipment viability for the remaining life claimed for the first period savings. Evidence of equipment viability means evidence that the equipment could and would have stayed in operation for the remaining life claimed for the first period savings.