

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

ENERGY DIVISION

Agenda ID: 18360  
RESOLUTION E-5074  
May 28, 2020

**R E S O L U T I O N**

Resolution E-5074: Ratifies the Executive Director's letters to direct Investor Owned Utilities to offer a 60-day advance payment to Energy Savings Assistance Contractors.

**PROPOSED OUTCOME:**

- Ratifies the March 23, 2020 and the April 7, 2020 letters sent by the Executive Director of the California Public Utilities Commission (Executive Director Letter) to direct Pacific Gas & Electric Company (PG&E), Southern California Edison (SCE), San Diego Gas & Electric Company (SDG&E), Southern California Gas Company (SoCalGas), Bear Valley Electric Service, Liberty Utilities LLC, PacifiCorp and Southwest Gas Corporation to offer a 60-day advance payment to Energy Savings Assistance (ESA) Contractors for their employees and provides direction in response to additional elements proposed by ESA Contractors.

**SAFETY CONSIDERATIONS:**

- Treating ESA homes requires customer contractor interaction in the customer home, which presents a risk to safety due to the COVID-19 pandemic if this activity resumes too soon. As this Resolution sets forth, IOUs and their Contractors are to follow all state and local government orders on social distancing to protect the health of the workers and the customer in order to mitigate this safety risk.

**ESTIMATED COST:**

- Decision (D.)16-11-022 authorized ESA and California Alternate Rates for Energy (CARE) budgets and programs

for 2017-2020. This Resolution does not trigger any collection of additional funds beyond already authorized collections. For a limited period following the return to normal ESA program operations, the per home costs of ESA treatments may be greater. As a result, IOUs will have fewer unspent funds remaining at end of 2017-2020 budget cycle and may also treat fewer homes than projected for the authorized budget.

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## **SUMMARY**

On March 19, 2020, to protect public health, all individuals living in the State of California were ordered to stay at home or at their place of residence to slow the spread of COVID-19. In order to comply with this order Pacific Gas and Electric Company (PG&E) San Diego Gas & Electric Company (SDG&E), Southern California Gas Company (SoCalGas), and Southern California Edison (SCE) halted all in-person Energy Savings Assistance Program activities. In response, the Executive Director of the California Public Utilities Commission (CPUC) sent a letter<sup>1</sup> requesting all Investor Owned Utilities (IOUs)<sup>2</sup> offer a 30-day advance payment to ESA Prime Contractors to help ensure the economic stability of the ESA program's workforce.<sup>3</sup>

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<sup>1</sup>[https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/News\\_Room/NewsUpdates/2020/Exec.%20Director%20Letter%20re%20ESA%20Contractors%20during%20COVID%2019%20Pandemic%20March%2023,%202020.pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/News_Room/NewsUpdates/2020/Exec.%20Director%20Letter%20re%20ESA%20Contractors%20during%20COVID%2019%20Pandemic%20March%2023,%202020.pdf)

<sup>2</sup> Pacific Gas and Electric, Southern California Gas, Southern California Edison, and San Diego Gas & Electric, Bear Valley Electric Service, Liberty Utilities LLC, PacifiCorp and Southwest Gas Corporation

<sup>3</sup> The five Small and Multi-Jurisdictional Utilities (SMJUs), Alpine Natural Gas Operating Company, Bear Valley Electric Service, Liberty Utilities LLC, PacifiCorp and Southwest Gas Corporation, were given the option to decide whether to opt-in and offer the 30-day advance payments to ESA Prime Contractors. The offer is not applicable to Alpine Natural Gas Operating Company since they are not currently under contract with their ESA contractor for 2020.

On April 7, 2020, the Executive Director of the CPUC sent a second letter<sup>4</sup> to the IOUs clarifying guidance of the March 23, 2020 letter, and requesting all four large IOUs to offer a second 30-day advance payment (total of 60-days) to Prime Contractors to help ensure the economic stability of the ESA program's workforce.

This Resolution ratifies elements of the Executive Director's urgent COVID-19 letters from March 23, 2020 and April 7, 2020 to sustain the ESA workforce. This Resolution additionally provides direction in response to additional elements proposed by ESA Prime Contractors and their subcontractors. Lastly, this Resolution does not establish precedent for standard Commission ratemaking or the ESA program.

Specifically, based on the unique workforce considerations of the ESA program in light of the COVID-19 pandemic, this Resolution ratifies the: 60-day advance payment to ESA Prime Contractors, approves with modification a pay-for-performance mechanism for repayment known as Post-Pandemic Return to Service credit, approves expedited IOU invoice payments, and requires all IOUs (including Small and Multi-Jurisdictional Utilities (SMJU)) to offer the advance payment to their ESA Prime Contractors. It denies transforming the advance into a forgivable loan, and denies the advance payment covering inventory/appliance supplier costs. It clarifies the calculation for advance payments, what overhead costs the advance payment should cover, payback periods and contract extensions, reporting and tracking requirements for the advance, and how IOUs and Contractors should handle duplicate financial assistance.

The direction herein on all elements of advance payment to the ESA workforce are retroactively effective such that direction here applies to all offers already made and accepted and offers to be made. As soon as possible or no later than 10 days from the date of a vote which adopts this Resolution, IOUs are to offer refreshed advance payment to Primes (who shall equivalently extend to any eligible subcontractors) that did not already accept advance payment for 60-days.

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<sup>4</sup>[https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/News\\_Room/NewsUpdates/2020/Exec.%20Director%20Second%20Letter%20re%20ESA%20Contractors%20April%207%202020.pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/News_Room/NewsUpdates/2020/Exec.%20Director%20Second%20Letter%20re%20ESA%20Contractors%20April%207%202020.pdf)

For all other Prime Contractors, IOUs shall as soon as possible or no later than 10 days from the date of a vote which adopts this Resolution, make any necessary contract changes regarding existing advance payments accepted. The goal of these refreshed offers and contract changes is that no eligible entity to receive advance payment is at an unfair disadvantage as a result of having already accepted, held for this Resolution action, or rejected an advance payment offered as a result of the earlier Executive Director Letters. The IOUs are to leave the offer open for 30 days after this Resolution is accepted by the CPUC.

## **BACKGROUND**

On March 4, 2020, Governor Newsom declared a State of Emergency in California related to COVID-19. On March 12, 2020, Governor Newsom issued a new Executive Order recognizing that individuals exposed to COVID-19 may be unable to report to work due to illness or quarantines, and ordering numerous measures including social distancing. On March 19, 2020, Governor Newsom ordered all residents to heed State public health directives, including the order for all individuals living in the state to stay home or at their place of residence except as needed to maintain continuity of operations at the federal critical infrastructure sectors (“Stay at Home” order).

As of March 23, all four large IOUs had suspended activities requiring face-to-face customer visits to implement their ESA programs. On March 18, 2020, recognizing “many ESA Contractors are, out of economic necessity, issuing layoff notices to ESA workers at this time,” The East Los Angeles Community Union et. al. filed a Joint Emergency Motion requesting the CPUC to “direct the IOUs to continue payments to ESA Contractors so that their workers can survive this temporary crisis by being able to pay for food, housing, and healthcare until the program is able to restart.”<sup>5</sup> On March 23, 2020, the Public Advocates Office

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<sup>5</sup> TELACU et. al., Joint Emergency Motion filed to proceeding A.19-11-003 “Application of Pacific Gas and Electric Company for Approval of Energy Savings Assistance and California Alternate Rates for Energy Programs and Budgets for 2021-2026 Program Years” on March 18, 2020

at the California Public Utilities Commission (Cal Advocates) submitted comments in response to the Joint Emergency Motion.<sup>6</sup>

On March 23, 2020, the Executive Director released a letter requesting all four large IOUs to provide specific assurance to help ensure the economic stability of the ESA program's workforce. The Executive Director sent this letter for a number of reasons including: the ESA program workforce's dependence on the ESA program funding, a large fraction of the workforce is comprised of small businesses and community-based organizations training local workforces with job skills, and the importance of local workforces to meet the 2020 ESA household treatment goals. This letter asked the IOUs to offer a 30-day advance payment to each eligible entity holding the contract with the IOU, i.e. the Prime Contractor or "Prime", to cover the ESA labor costs plus costs critical to sustaining the ESA workforce (e.g., employer's contribution to health care premium). The letter provided guidelines for making the advance payment, the period sustained and categories covered by the advance, payback of the advance, including timeline, tracking and reporting requirements.

On March 24, 2020, all four large IOUs offered their Prime Contractors 30-day advance payments. On March 26, 2020, all four large IOUs reported responses from Contractors regarding the initial 30-day advance payment offer made to ESA Contractors during the COVID-19 pandemic. In their response letters, the IOUs stated that they have no overdue payments, and, further that they would make expedited payment on remaining invoices in-hand to support increased cash flow to all Primes.

Of the 78 ESA Contractors across all IOU programs, some serving multiple territories, 100 percent reported back to the IOUs: 51 percent accepted the offer, 34 percent declined, and 15 percent (10 Contractors) held for a CPUC response to alternatives. The CPUC received 28 alternative proposals from 16 Contractors

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<sup>6</sup> Cal Advocates Response to TELACU et. al. Joint Emergency filed to proceeding A.19-11-003 "Application of Pacific Gas and Electric Company for Approval of Energy Savings Assistance and California Alternate Rates for Energy Programs and Budgets for 2021-2026 Program Years" on March 23, 2020

through the IOUs. In the IOU response letters, the IOUs provided their own disposition recommendation to the Contractor proposed alternatives.

On March 26, 2020, the Administrative Law Judge for this proceeding dismissed the TELACU et. al., Joint Emergency Motion as moot as the issue had been addressed by the March 23, 2020 letter from the CPUC's Executive Director.<sup>7</sup>

On April 1, 2020, the IOUs began sending follow up notifications of extended suspension of in-person program activity through April 30, 2020 to ESA Contractors.

In response to the alternative proposals received from Contractors and the extension of the suspension of in-person program activity, the Executive Director issued a second letter on April 7, 2020. The letter included the following requested actions for the IOUs:

- Encourage IOUs to expedite invoice payments
- Offer an additional 30-day advance to ESA Contractors (for a total of 60-days of advance funds)
- Allow consideration of overhead costs in advance
- Update calculation for advance to include months in 2020

The CPUC takes specific action in this Resolution to affirm and clarify the two Executive Director letters issued in response to the Governor's emergency proclamation and Executive Orders. The goal of this Resolution is to provide continuity and certainty to the ESA Contractor community, while also ensuring consistency across all utility actions regarding the ESA program during the COVID-19 pandemic.

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<sup>7</sup> Administrative Law Judge email ruling dismissing TELACU et. al. Joint Emergency filed to proceeding A.19-11-003 "Application of Pacific Gas and Electric Company for Approval of Energy Savings Assistance and California Alternate Rates for Energy Programs and Budgets for 2021-2026 Program Years" on March 26, 2020

## **NOTICE**

The Executive Director Letters were distributed to the Service List for Application 19-11-003 and Application 15-02-001. Letters were also posted on the CPUC COVID-19 information website.<sup>8</sup>

## **DISCUSSION**

Section 1 of the Discussion provides disposition of alternative proposal elements received but not discussed in the Executive Director letters. Section 2 is a summary of all final direction to IOUs on elements covered in the Executive Director letters and discussed in this Resolution.

### **1. Disposition of alternative proposal elements to Executive Director letters**

#### **1.1. Advance Payment Payback**

The TELACU et. al. (Joint Parties) Joint Emergency Motion initially asked the CPUC to consider granting a forgivable loan to ESA contractors during the emergency shutdown due to the COVID-19 pandemic. Cal Advocates noted in their comments submitted on March 23, 2020 that CPUC authorization is required to modify the contracts so that ESA contractors could receive payment when workers are not performing any ESA work functions.<sup>9</sup> Specifically, Cal Advocates state that “allocating ESA funds for worker wages, healthcare benefits, and overhead without providing direct services to ESA households (e.g., home inspections, measure installations, and energy education) would require modification of CPUC Decision (D.) 16-11-022, which approved the IOUs’ last ESA and California Alternate Rates for Energy (CARE) applications.”<sup>10</sup>

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<sup>8</sup> <https://www.cpuc.ca.gov/covid/>

<sup>9</sup> Cal Advocates Response to TELACU et. al. Joint Emergency Motion filed to proceeding A.19-11-003 “Application of Pacific Gas and Electric Company for Approval of Energy Savings Assistance and California Alternate Rates for Energy Programs and Budgets for 2021-2026 Program Years” on March 23, 2020

<sup>10</sup> Cal Advocates Response to TELACU et. al. Joint Emergency Motion, pg. 2, Footnote 6, “D.16-11-022, pp. 3-4 (discussing statutory and CPUC objectives for the ESA program); id. at pp. 4-5 (citing the 2006 ESA/CARE decision’s two overriding criteria, which includes “that the money the utilities will spend on the [Low-Income Energy Efficiency] and CARE programs should benefit low-income customers by

Due to the fact that ESA program funds are collected to ensure that low-income households are receiving weatherization treatments, any advance payments issued will need to be earned through the future treatment of homes through the ESA program, as further described below.

*1.1.1. Proposal for Repayment via a “Resiliency cost” and direction to instead create a “Post -Pandemic Return to Service” Credit*

On March 27 and March 31, 2020, the CPUC received two additional responses from Energy Efficiency Council (EEC), a 501(c)(6) trade organization comprised of energy efficiency service providers, consultants and specialty contractors located throughout the state of California, to the offer of advance payment which proposed a “Resiliency Costs” credit to be added to the costs per ESA household treated.

The mechanism EEC proposed would calculate a credit, or dollar per ESA household treated, that accounts for COVID-related ESA “workforce resiliency”. The upfront cost for this “workforce resiliency” would be borne by the ESA program through the advance payments to help contractor businesses through the COVID pandemic. Once the pandemic ends and the ESA stop-work order is lifted, this credit per household treated would incentivize contractors to ramp-up ESA household treatments as quickly as possible to pay back their advance. EEC proposed that credits earned by each contractor who takes an advance would be directly tied to the number of households treated, and only be usable to reduce that Prime’s balance of advanced funds. The credits would not be used to increase profit or pay additional money directly to the contractor.

EEC further states that this methodology requires Contractors to maintain responsibility for repayment of all advances, and provides a pay-for-performance mechanism for repayment. The more customers served by the Contractor, the faster the repayment.

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reducing their bills and assuring their comfort”); id. at Conclusion of Law 1-7 (discussing Public Utilities Codes Sections 2790(a), 2790, 382(b), 382(e), the purpose of LIEE program, and the objectives of the ESA program).”



ED staff's interpretation of the EEC proposal is that the IOU advance payment to the Prime is essentially a down-payment ensuring future access to a ready workforce when the restrictions on work are lifted. The benefit from this down-payment is realized as the ready workforce returns and treats all of the remaining households to be treated per the current 2017-2020 ESA program budget.

*Disposition: Create a Post -Pandemic Return to Service Credit*

As we transition out of stay-at-home in California, we expect that there will be an additional cost post returning to work for businesses with liabilities accrued to stay afloat during the stay-at-home order. For example, additional costs may stem from a business with worse credit metrics thus exposing them to a) higher borrowing fees and/or interest rates, and/or b) burdens from having difficulty borrowing other money to help sustain the business. These Primes and subcontractors accepted advance payments to be ready to quickly return to servicing homes. Additional cost associated with holding new liabilities is directly related to the COVID-19 pandemic and is applicable to the businesses that accepted an advance payment. If debts and/or liabilities are not paid off post the shelter in place being lifted, these businesses could falter even after returning to service.

The CPUC accepts in part the "resiliency cost" proposal to address the unique workforce resiliency challenges presented by the COVID-19 pandemic to ESA program goals. We accept that there is an incremental cost associated with household treatments post returning to work and that Primes that accepted an advance payment should be able to add this cost to invoices to IOUs in order to accurately reflect those increased costs and to reduce the balance of advanced funds. We will refer to this cost as the Post-Pandemic Return to Service (PPRS) credit which is a per home treated cost and has the same value for all Primes accepting an advance (and any associated subcontractors that accepted an advance) in all regions.

The benefit to all ratepayers associated with this cost is that these programs can safely, and in a manner compliant with physical distancing<sup>11</sup>, ramp back to full capacity as a result of the sustained worker expertise to treat income qualified households, now in even greater need, once the suspension is lifted. Without such a remedy, program treatment goals set for year-end 2020 will be in further jeopardy.

The Prime shall only be able to generate PPRS credits through treatment of ESA-eligible households during the six months after the ESA program suspension of face-to-face activities is lifted by the IOUs. Further, these PPRS credits may only be applied to paying back advance funds that went towards labor costs and other employee costs critical to sustaining the workforce (e.g., employer's contribution to health care premium, etc.). PPRS credits shall not be applied to the portion of the advanced funds that went toward overhead costs, and PPRS credits can only be generated and used to draw down the applicable balance of advanced funds to zero. A Prime that has not accepted advanced funds cannot add PPRS credits to invoices.

The IOUs shall submit a Joint Tier 2 Advice Letter 30 days from the date of a vote which adopts this Resolution. The IOUs shall communicate to all contractors 15 days before submitting this Advice Letter what their proposed value of the PPRS credit per household may be set at.

The Advice Letter shall contain the following information:

- Proposed value of PPRS, on a dollar-per-household-treated basis
- Methodology used to calculate PPRS credit
- Each IOU should consider how many households remain to be treated in their territory, and that there is budget to treat

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<sup>11</sup> Providing ESA services while supporting physical distancing as stated in the six indicators required by Governor Newsom for modifying the stay-at-home order. See: *California's Roadmap to Modify the Stay-at-Home Order* <https://www.gov.ca.gov/wp-content/uploads/2020/04/California-Roadmap-to-Modify-the-Stay-at-Home-Order.pdf>

- Logistics for how the PPRS credit mechanism will be integrated into current invoicing procedures
- Methodology for accounting for any draw down on balance of advanced funds as a result of pass-through from duplicate financial assistance received
- Reporting to track the PPRS payback mechanism
- Funds advanced to, and accepted by, ESA Contractors for labor costs and other employee costs critical to sustaining the workforce, and thus the portion of total balance of funds advanced that PPRS credits may be applied to

The IOUs, in their joint Tier 2 Advice Letter filing, should set the PPRS credit, and application thereof, such that the following requirements are met:

- PPRS credit is equal across all Primes and sub-Contractors and IOU regions
- PPRS credit is only available for six months after the IOUs lift all suspensions on face-to-face interactions through the ESA program
- The PPRS credit is only available to Primes that accepted/accept an advance payment
- PPRS credit cannot be applied to overhead costs that have been provided in the advanced payment in the proposed calculation methodology. The PPRS should not reflect or facilitate payback of funds advanced for overhead costs, i.e. costs not associated with labor costs and other employee costs critical to sustaining the workforce

By following these requirements ED staff's disposal of the Advice Letter may, depending on the circumstances, be achieved by disposition letter or, in other circumstances, by Resolution.

#### *1.1.2. Clarifying Payback Timeframes*

The most recent Executive Director letter issued on April 7, 2020 stated that the Prime Contractor should zero-out the balance of advanced funds by a date negotiated with the IOU but no sooner than December 31, 2020. If necessary, a contract extension should be negotiated with the Prime Contractors giving a minimum of six months after the lifting of orders limiting face-to-face work. Therefore, the "Payback Period" is the period commencing on the date that the

IOU notifies the Prime the suspension has ended until the later of (a) December 31, 2020, or (b) the end of the sixth calendar month after the suspension end date. Any repayment term included in an IOU offer should be expressly stated as a placeholder term only, and accompanied by clear guidance to the Prime that they have 30 calendar days after the date the restrictions are lifted to set a schedule and increments for repayment, per guidance in my March 23, 2020 letter:

*The Prime Contractor has discretion to set the schedule and increments by which they will reach a zero funds advance balance by the negotiated date, but the planned schedule should be reported to the IOU 30 days after the date the restrictions are lifted.*

To provide both flexibility and accountability regarding the pay back of these advance payments, all Primes who accept an advance payment shall zero out their entire funds advanced balance no later than December 31, 2021.

All contract extensions should be considered in the context of the proceeding for the California Alternate Rates for Energy/Energy Savings Assistance Program Applications for Program Years 2021-2026 (A. 19-11-003). Specifically, the guidance decision D.19-06-022 stated that ESA Program bridge funding is authorized for January 1, 2021 through June 30, 2021 if the CPUC has not voted to approve the Application by November 16, 2020, and bridge funding for the second half of the year is authorized if the Application has not been approved by May 16, 2021.<sup>12</sup>

Should we enter a bridge funding period for the ESA program, or the “Stay at Home” order lasts for a duration such that spending the budgets or reaching the ESA goals becomes infeasible, it is reasonable for IOUs to assume that bridge funding will go into effect or associated budgets from 2017-2020 will be spent into 2021. Therefore, this Resolution leaves flexibility to the IOUs to negotiate a payback term with Primes into 2021.

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<sup>12</sup> D.19-06-022, pg.13

In the event that the IOU incurs costs related to payment payback, the IOUs are instructed to track those costs in the COVID-19 memorandum accounts as set out by Resolution M-4842 to track incremental costs associated with complying with this Resolution.

## **1.2. Advanced Payment Tracking and Reporting**

The original proposal from the first Executive Director letter required that the Prime Contractor would provide weekly reporting on how the advanced funds were being used. Extensive feedback was received from many of the Contractors that this type of reporting would be overly burdensome and may deter certain Contractors from participating in the program.

However, tracking and reporting how these funds were spent is essential in ensuring that ratepayer funds were being handled appropriately and with the intent that the CPUC provided. As such, below are several reporting mechanisms that the IOUs and Prime Contractors will put in place to track how these advanced ESA funds were spent.

### *1.2.1. Initial Disbursement Tracking*

Prime Contractors will sign Affidavits, and submit the them to the IOUs, affirming that the advance funding is going to the appropriate staff and resources that these funds were intended to support.

The Prime Contractor will provide monthly reports to the IOUs, using a template provided by the IOUs, corresponding to the months or partial months that the advance covered, each containing

- the amount of funds advanced, by category broken down at least to
  - employee salary and wages
  - the employer costs for continuing the employees' benefits
  - other employee costs deemed critical to sustaining the workforce
  - remaining amount of funds advanced and associated costs (e.g. overhead)
- the calendar period for which the advance funds covered costs
- the number of workers these funds sustained and for how long,
- at what salary/hourly rate (include data to show distribution, maximum, and minimum), and

- the description of employee benefits covered.

*1.2.2. Sustained Worker Tracking*

The Prime Contractor will provide monthly reports over the period subsequent to the months the advance payment covers, which shall include:

- the number of workers still retained on employee rolls of the workers sustained with advance payment funds the applicable financial assistance received that month from Federal, State, or other entities offering relief that duplicate coverage of the costs covered with this ESA advance payment

*1.2.3. Repayment Tracking*

Each IOU will report as part of their monthly ESA/CARE reporting the status of repayment for all advances made to Contractors in their service territory.

Within 30 days of an affirmative vote on this Resolution, the IOUs shall jointly propose, in a Tier 1 advice letter, a reporting template to be incorporated into the IOUs' monthly reporting. This reporting will begin after the first full month of the ESA program has returned to its normal operating procedures.

*1.2.4. Auditing*

The contract-holding IOU and CPUC shall have full access to inspect and audit the accounting books (associated with payroll and benefits) of all ESA Prime Contractors and Sub-Contractors for a period of four years.

**1.3. Duplicate Financial Assistance**

The CPUC wants to encourage coordination between the ESA advances discussed here and the Federal financial assistance (such as the Small Business Administration's Paycheck Protection Program), California State financial assistance (such as California Infrastructure and Economic Development Bank), and any other relief obtained for covering the same costs as the ESA advance covers. The CPUC recognizes that the uncertainty surrounding the duration of the COVID-19 crises makes the amount of financial support needed by Contractors unknown.

Therefore, the CPUC anticipates Contractors will avail themselves of whatever financial assistance they can, with an explicit caution that there should be no overlap, or duplicate funding. This is defined as multiple sources of financial

assistance being used for the same labor, overhead, or other expenses, to cover costs over the same calendar period.

If Contractor uses only one source of financial assistance during the COVID-19 crisis, whether the advance from the ESA program or other financial assistance (e.g. Federal/State), then there is no concern regarding duplicate funding, therefore no action is required.

However, if the Contractor uses multiple sources of financial assistance, but for different needs and timeframes, then the Contractor will need to affirm, via reporting accompanied by affidavit submitted to the IOU, that the ESA advance is not being used concurrently with other funding streams for the same labor, overhead or other purposes.

Finally, if Prime or its Sub-Contractors for ESA work receives any assistance monies that are duplicate funding, the Prime shall pass-through to the IOU as soon as possible or no later than thirty (30) days after receipt thereof, all such assistance amounts up to the then current balance of advanced funds, and the balance of advanced funds shall be decremented by the amount passed through to the IOU.

## **2. Summary of all final direction to IOUs on elements covered in Executive Director letters and discussed in this Resolution**

The actions presented in the March 23, 2020, and April 7, 2020 CPUC Executive Director letters are outlined, updated and affirmed in the list below.

**2.1. Eligibility:** Primes (and their subcontractors) that have been directed by the IOUs to suspend work in response to COVID-19 and hold existing contracts with the IOUs (or their Primes) to implement ESA programs and ESA Common Area Measures in 2020 are eligible to receive advance payment.

2.1.1. To ensure that every ESA Prime Contractor has the opportunity to consider the advance payment offer, the CPUC will require all IOUs (including the SMJUs) to offer all of their ESA Prime Contractors the 60-day advance payment in their service territories.

**2.2. Period sustained with Advance Payment:** The IOUs must offer a 60-day advance payment to each eligible entity holding the prime contract with the IOU with terms consistent with this Resolution. This offer will continue to be available for 30 days after a CPUC vote adopting this Resolution. The Prime can choose to accept a smaller advance payment sum than is offered.

2.2.1. The IOUs are to change the Primes' contracts for either or both the first 30-day advance payment accepted and the second advance payment offered such that no eligible entity to receive advance payment is at an unfair disadvantage as a result of having already accepted or not and advance payment offered as a result of earlier Executive Director Letters.

2.2.2. The offer is an advance that reflects costs for a 60-day period. The CPUC does not intend to prescribe calendar dates associated with 60-day advance payment

**2.3. Advance Payment Coverage:** The advance payment offered should cover the labor costs plus costs critical to sustaining the workforce (e.g., employer's contribution to health care premium, etc.). The advance payment may also cover overhead costs if in the IOU's judgement such costs are reasonably necessary to avoid significant delay ramping up operations after suspensions are lifted (e.g., lease payments, liability insurance).

2.3.1. The advance payments shall not be used to pay for company profits, any materials, or other ancillary costs not related to sustaining the workforce. Inventory costs associated with the extra stock that has accumulated during the suspension of ESA activities is not covered under this advance payment.

**2.4. Advance Payment Calculation:** The payment shall be calculated by the IOU as the average monthly pay to the Prime Contractor, using either the average over the 2019 program year for ESA program work, or a variant amount reflective of the Prime's planned 2020 workforce.



**2.5. Advance Payment Tracking and Reporting:** The Prime Contractor will provide an affidavit to the IOU affirming the proper use of these funds, and track the balance of this advance payment on a monthly basis until it is paid back.

2.5.1. The Prime Contractor is to track advance payments made to sub-Contractors and put measures in place to assure sub-Contractors in turn equitably distribute this advance payment to workers impacted.

2.5.2. Prime Contractors are to manage tracking and reporting to the IOU holding their contracts for employees of the Prime Contractor and for eligible sub-Contractor entities the Prime Contractor advances funds to. Monthly reports should be accompanied by signed affidavits of a corporate director or officer (or equivalent) of the Prime Contractor attesting to the accuracy of the reports.

2.5.3. Specific tracking and reporting includes, but is not limited to, the amount of funds advanced; the amount for employee salary and wages; the number of workers these funds sustained and for how long, at what salary/hourly rate (include data to show distribution, maximum, and minimum), and over what calendar period; the employer costs for continuing the employees' benefits and description of employee benefits covered; any other employee costs deemed critical to sustaining the workforce; the remaining amount of funds advanced and associated costs (e.g. overhead), and for what calendar period these remaining funds covered; the applicable financial assistance received from Federal, State, or other entities offering relief that duplicate coverage of the costs covered with this ESA advance payment.

**2.6. Advance Payment Payback:** The Prime Contractor should zero-out the balance of advanced funds by a date negotiated with the IOU but no sooner than December 31, 2020. If necessary, a contract extension shall be negotiated with the Prime Contractors giving a minimum of six months after the lifting of orders limiting face-to-face work. Therefore, the "Payback Period" is the period commencing on the date that the IOU

notifies the Prime the suspension has ended through at least the later of (a) December 31, 2020, or (b) the end of the sixth calendar month after the suspension end date.

- 2.6.1. Any repayment term included in an IOU offer should be expressly stated as a placeholder term only, and accompanied by clear guidance to the Prime that they have 30 calendar days after the date restrictions are lifted to set a schedule and increments for repayment.
- 2.6.2. All Primes who accept an advance payment shall zero out their entire funds advanced balances no later than December 31, 2021.
- 2.6.3. In determining when and how to lift restrictions on face-to-face work, the IOUs and ESA workforce are to heed all state and local government orders on social distancing to protect the health of the workers and the customer.
- 2.6.4. Post-Pandemic Return to Service (PPRS) credit will only be available for six months after IOUs authorize a return to face-to-face service in the ESA program, and only used by Primes that accept this advance payment to pay back the eligible balance of the advance per their arrangement with the IOU.
- 2.6.5. All contractor extensions for the ESA program will be conducted in the context of bridge funding timeframes as laid out in the guidance decision D.19-06-022.

**2.7. Duplicate Financial Assistance:** If the Prime obtains other financial assistance that can serve as replacement cash source for sustaining workforce and businesses during the timeframe that the ESA advance covers, then they shall pass-through to the IOU (and subcontractors shall pass-through to Prime) all such assistance amounts intended for the same costs received by the Prime (or subcontractor) up to the then current balance of advance funds.

**2.8. Expedited Invoice Payment:** IOUs should maintain their efforts to accelerate payment on invoices received from Primes, and target making payment on invoices within 10 days of receipt of invoice. Additionally, IOUs should waive any associated fee to Primes for the accelerated processing of their invoices.

**2.9. Facilitating shift from face-to-face to alternative forms of customer**

**interaction:** The second Executive Director letter directed Energy Division to amend the ESA Policy and Procedure Manual, or “Manual” to address COVID-19 and other unforeseen emergency situations. However, prior Decisions did not authorize Energy Division to make these modifications. Still, existing language in the Manual provides flexibility for IOU program managers to deviate from established procedures to respond to cases of customer hardship and unusual circumstances. Specifically, the P&P manual states:

*ESA Program Managers have the flexibility to deviate from established procedures to respond to cases of customer hardship and unusual circumstances. The Program Managers shall document any exceptions in the customer and project file. Changes in the means of implementing policies, procedures and standards will be discussed with contractors prior to being made.* <sup>13</sup>

Given this flexibility, this Resolution makes no changes the ESA Policy and Procedure Manual. The CPUC acknowledges there is flexibility for the IOUs to shift from face to face marketing outreach and education activities to alternative mechanisms to promote low income programs (ESA/CARE/FERA) and enroll qualifying households due to public health and safety concerns and mandates in response to COVID-19.

**COMMENTS**

Public Utilities Code section 311(g)(1) provides that this Resolution must be served on all parties and subject to at least 30 days public review. Please note that comments are due 20 days from the mailing date of this Resolution. Section 311(g)(2) provides that this 30-day review period and 20-day comment period may be reduced or waived upon the stipulation of all parties in the proceeding.

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<sup>13</sup> ESA Policy and Procedures Manual 2017-2020, pg. 7  
<https://www.cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=6442457425>

The 30-day review and 20-day comment period for the draft of this Resolution was neither waived nor reduced. Accordingly, this draft Resolution was mailed to parties for comments, and will be placed on the CPUC's agenda no earlier than 30 days from today.

**FINDINGS**

1. Executive Director letters issued on March 23, 2020 and April 7, 2020 correctly used a payment advance offer to Energy Savings Assistance Program Prime Contractors during the suspension of Energy Savings Assistance Program activities.
2. The 60-day advance payment calculation is the average monthly pay to the Prime Contractor, using either the average over the 2019 program year for Energy Savings Assistance program work, or a variant amount reflective of the Prime's planned 2020 workforce.
3. The 60-day advance payment offer to each eligible entity holding the prime contract with the Investor Owned Utility for the Energy Savings Assistance Program is an appropriate amount to offer.
4. Investor Owned Utilities and Prime Contractor existing contracts for advance payment accepted will need to comport with the changes issued in this Resolution.
5. Advance payments will be available to Prime Contractors for 30 days after this Resolution has been approved.
6. The 60-day advance payment covers overhead costs if in the Investor Owned Utilities' judgement such costs are reasonably necessary to avoid significant delay ramping up operations after suspensions are lifted (e.g., lease payments, liability insurance). The advance payments do not pay for company profits, any materials, or other ancillary costs not related to sustaining the workforce. Inventory costs associated with the extra stock that has accumulated during the suspension of ESA activities is not covered under this advance payment.
7. CPUC has the authority to require affidavits from and monthly reporting by the Prime Contractors to the Investor Owned Utilities regarding how the advance payment was spent.
8. Tier 1 Advice Letter filings by Investor Owned Utilities are acceptable for proposing a monthly reporting template for Prime Contractors to be

- incorporated into the Investor Owned Utilities' Energy Savings Assistance Program monthly reporting.
9. Investor Owned Utilities repayment terms to the Prime Contractor are placeholder term only, and should be accompanied by clear guidance to the Prime that they have 30 calendar days after the date restrictions are lifted to set a schedule and increments for repayment.
  10. Prime Contractors who have accepted an advance payment will have paid back the balance of their advance payment no later than December 31, 2021.
  11. Due to the COVID-19 pandemic, Prime Contractors may face additional cost returning to work for businesses with liabilities accrued to stay afloat during the stay-at-home order. Additional cost associated with holding new liabilities is directly related to the COVID-19 pandemic and is applicable to the businesses that accepted an advance payment.
  12. Post-Pandemic Return to Service credit for contractors is an acceptable approach for contractors to repay their advances to address the unique workforce resiliency challenges presented by the COVID-19 pandemic to ESA program goals.
  13. Post-Pandemic Return to Service credit will be available for six months after IOUs authorize a return to face-to-face service in the ESA program.
  14. Post-Pandemic Return to Service credit can only be applied in invoices of Prime Contractors who accepted an advance payment to pay back the applicable balance of the advance.
  15. Investor Owned Utilities communicating a proposed value of the Post-Pandemic Return to Service credit to Prime Contractors 15 days after the Resolution is voted on is reasonable.
  16. A joint Tier 2 Advice Letter filing 30 days after the Resolution is voted on is acceptable to provide further details on implementing a Post-Pandemic Return to Service credit.
  17. Decision 19-06-022 provides guidance on Energy Savings Assistance Program contract extensions between Prime Contractors and Investor Owned Utilities.
  18. Prime Contractor financial assistance outside of the Energy Savings Assistance Program advance that serves the same purpose of sustaining workforce and businesses during the same timeframe is known as duplicative assistance, and it is appropriate to pay back to the Investor Owned Utilities without application of Post-Pandemic Return to Service Credit, any advance that has been duplicated.

19. Investor Owned Utilities are able to expedite their invoice payments to Prime Contractors during suspended Energy Savings Assistance Program activities.
20. The Energy Savings Assistance Program Policy and Procedure Manual provides flexibility for the Investor Owned Utilities to shift from face to face marketing outreach and education activities to alternative mechanisms to promote low income programs and enroll qualifying households due to public health and safety concerns and mandates in response to COVID-19.
21. This Resolution ratifies the Executive Director Letters of March 23, 2020 and April 7, 2020.

**THEREFORE IT IS ORDERED THAT:**

1. The Executive Director's letters of March 23, 2020 and April 7, 2020, to provide 60-day advance payments to Energy Savings Assistance Program Prime Contractors are ratified as updated, clarified and affirmed within this Resolution.
2. Pacific Gas & Electric Company, Southern California Edison, San Diego Gas & Electric Company, the Southern California Gas Company, Alpine Natural Gas Operating Company, Bear Valley Electric Service, Liberty Utilities LLC, PacifiCorp and Southwest Gas Corporation shall, within 30 days of this Resolution, provide new, updated terms for offers already accepted by Contractors to comport with this Resolution, and new updated offers for those Contractors that did not already accept. Investor Owned Utilities shall offer a 60-day advance payment to each eligible entity holding the prime contract with the utility. This offer will continue to be available for at 30 days after a CPUC vote adopting this Resolution.
3. Pacific Gas & Electric Company, Southern California Edison, San Diego Gas & Electric Company, the Southern California Gas Company, Alpine Natural Gas Operating Company, Bear Valley Electric Service, Liberty Utilities LLC, PacifiCorp and Southwest Gas Corporation shall calculate this advance payment as the average monthly pay to the Prime Contractor, using either the average over the 2019 program year for Energy Savings Assistance program work, or a variant amount reflective of the Prime's planned 2020 workforce.

4. Pacific Gas & Electric Company, Southern California Edison, San Diego Gas & Electric Company, the Southern California Gas Company, Alpine Natural Gas Operating Company, Bear Valley Electric Service, Liberty Utilities LLC, PacifiCorp and Southwest Gas Corporation shall collect affidavits from Prime Contractors regarding how advance payments are spent, and will implement monthly reporting requirements on advance payments as instructed in this Resolution.
5. Pacific Gas & Electric Company, Southern California Edison, San Diego Gas & Electric Company, the Southern California Gas Company, Alpine Natural Gas Operating Company, Bear Valley Electric Service, Liberty Utilities LLC, PacifiCorp and Southwest Gas Corporation shall set-up a “Payback Period” commencing on the date that the Investor Owned Utilities notifies the Prime the suspension has ended until the later of (a) December 31, 2020, or (b) the end of the sixth calendar month after the suspension end date. Any repayment term included in an Investor Owned Utility offer should be expressly stated as a placeholder term only, and accompanied by clear guidance to the Prime that they have 30 calendar days after the date restrictions are lifted to set a schedule and increments for repayment. All Prime Contractors who accept an advance payment shall zero out their balances no later than December 31, 2021.
6. Pacific Gas & Electric Company, Southern California Edison, San Diego Gas & Electric Company, and the Southern California Gas Company, on behalf of all Investor Owned Utilities, including Small Multijurisdictional Utilities, shall communicate to all Prime Contractors 15 days from an affirmative California Public Utilities Commission vote on this Resolution a proposed value of the Post-Pandemic Return to Service credit per household treated through the Energy Savings Assistance program.
7. Pacific Gas & Electric Company, Southern California Edison, San Diego Gas & Electric Company, and the Southern California Gas Company shall submit a joint Tier 2 Advice Letter on behalf of all Investor Owned Utilities, including Small Multijurisdictional Utilities, 30 days from an affirmative California Public Utilities Commission vote on this Resolution that contains a proposed value of Post-Pandemic Return to Service credit, on a dollar-per-household-treated basis, the methodology used to calculate PPRS credit, timeframe and logistics for how the Post-Pandemic Return to Service credit mechanism will be integrated into current invoicing

procedures, and reporting system to track the Post-Pandemic Return to Service credit mechanism adopted to address the unique challenges created by COVID-19 for the Energy Savings Assistance program.

8. Pacific Gas & Electric Company, Southern California Edison, San Diego Gas & Electric Company, and the Southern California Gas Company shall submit, within 30 days of an affirmative vote on this Resolution, a Tier 1 advice letter, proposing a reporting template, as described in this Resolution, to be incorporated into the Investor Owned Utilities' monthly reporting.
9. Pacific Gas & Electric Company, Southern California Edison, San Diego Gas & Electric Company, the Southern California Gas Company, Alpine Natural Gas Operating Company, Bear Valley Electric Service, Liberty Utilities LLC, PacifiCorp and Southwest Gas Corporation shall maintain their efforts to accelerate payment on invoices received from Primes, and target making payment on invoices within 10 days of receipt of invoice. Additionally, the utilities shall waive any associated fee to Primes for the accelerated processing of their invoices.

This Resolution is effective today.

I certify that the foregoing Resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on May 28, 2020, the following Commissioners voting favorably thereon:

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ALICE STEBBINS  
Executive Director