PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Agenda ID: 19013
ENERGY DIVISION **RESOLUTION E-5115**
January 14, 2021

R E S O L U T I O N

Draft Resolution E-5115. Addresses issues related to evidence requirements for the determination of energy consumption baselines for energy efficiency programs pursuant to D.16-08-019 and Resolution E-4818.

PROPOSED OUTCOME:

- Adopts minimum evidence *requirements* guidance to support custom projects accelerated replacement measure type.

SAFETY CONSIDERATIONS:

- There is no impact on safety.

ESTIMATED COST:

- Does not increase costs beyond the energy efficiency budgets adopted in D.18-05-041.

By Energy Division's own motion in Compliance with Resolution E-4818.

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1. SUMMARY

This resolution adopts guidance for the supporting documentation required when implementing the preponderance of evidence process adopted in Resolution E-4939 for meeting "accelerated-replacement" criteria in custom energy efficiency projects.[1] Accelerated-replacement refers to projects for which an energy efficiency incentive induced a customer to replace an inefficient equipment or process with one that is more energy efficient while the existing equipment or process is still functioning.[2]

In CPUC Decision (D.) 16-08-019 and Resolution E-4818, the CPUC directed staff to develop rules setting the "preponderance of evidence" standard to demonstrate that the replacement of inefficient equipment or process with a more energy efficient one resulted from an energy efficiency program offering and would not have happened otherwise .[3] . To comply with these CPUC directives, this resolution provides:

- Documentation required to demonstrate that existing energy inefficient equipment would continue to operate at an expected level of service for its remaining useful life,[4]
- Guidance on the minimum documentation required to demonstrate program influence,[5] and

[1] Custom Energy Efficiency Projects are those projects whose efficiency savings are derived from site-specific calculations, rather than pre-determined measure-level values. Custom Programs include projects in Commercial, Residential, Industrial & Agricultural Sectors.

[2] Accelerated-replacement includes the subcategory of "repair-eligible" equipment, since the preponderance of evidence determination process adopted in Resolution E-4939 applies to all accelerated-replacement measure types, including those associated with "repair-eligible" equipment, eliminating the need for separate considerations or processes for repair-eligible projects.

[3] Energy efficiency program administrators includes both investor-own utilities and non-investor owned utilities such as Regional Energy Networks and Community Choice Aggregates.

[4] Note that the required documentation varies by incentive level.

[5] Program influence is defined as the replacement of an energy inefficient equipment or process with a more energy efficient one is being done so because of program offerings through a program administrator's energy efficiency program.

- A description of the process for future updates to CPUC Staff's Preponderance of Evidence Guidance Document.[6]

This Resolution completes the direction of (D.)16-08-019 Ordering Paragraph 4, which directed CPUC staff to facilitate a working group process to discuss documentation required to meet the preponderance of the evidence standard for accelerated replacement and bring forth a resolution to the CPUC.

2. BACKGROUND

In October of 2015, California adopted two pivotal pieces of legislation affecting energy efficiency policy in the state. Senate Bill (SB) 350 (DeLeon 2015) calls on the California Energy Commission (CEC), the CPUC, and publicly owned utilities to work together to double cumulative energy efficiency savings achieved by 2030. The second, Assembly Bill (AB) 802 (Williams 2015) calls on the CPUC to authorize investor owned utilities (IOUs) to implement programs that improve the efficiency of existing buildings and take into account all estimated energy usage reductions resulting from measures that bring existing buildings, at a minimum, into conformity with the requirements of Title 24 of the California Code of Regulations. CPUC Decision (D.)16-08-019, issued on August 18, 2016 within the Energy Efficiency Rulemaking 13-11-005, recognized the complexity of the rules concerning methods to calculate a building or process's existing energy usage baseline in addressing AB 802. The Decision directed CPUC staff to facilitate a working group to develop a consensus set of recommendations to address energy usage baseline details that could not be fully addressed in D. 16-08-019, due to insufficient record and consensus opinion available at that time. Specifically, Ordering Paragraph 4 of D.16-08-019 directed CPUC staff to:

[6] CPUC staff's "Project basis as Early Retirement (ER)/Replace-on-burnout (ROB)/Normal Replacement (NR)/New Construction (NC)/Add-on Retrofit (Ret) and remaining/Effective useful Life (RUL/EUL), and Preponderance of evidence" guidance document is located at: https://www.cpuc.ca.gov/General.aspx?id=4133.

> "facilitate a working group process … to discuss measure-level baseline rules and documentation required to meet the 'preponderance of the evidence' standard for accelerated replacement and repair eligible projects."

Resolution E-4939, dated October 11, 2018, adopted the use of a "preponderance of evidence" [7] determination process for any accelerated-replacement measure type.

CPUC staff facilitated the working groups in accordance with D.16-08-019 and designated the working groups as the "Track 1 Working Group" (T1WG) and the "Track 2 Working Group" (T2WG). The Track 1 Working Group commenced in October of 2016 and was assigned to: a) identify energy usage baselines at the measure-level and determine whether these should vary by sector- or program-level savings categories; and b) determine the evidence and documentation required to show that a project or piece of equipment is "repair eligible" or an "accelerated replacement."[8] The Track 2 Working Group commenced in April of 2017 and was initially assigned to propose improvements to and/or streamlining of the custom projects review processes and the establishment of industry standard practice (ISP) baselines.

Track 1 and Track 2 Working Groups met regularly to discuss these issues. Both Working Groups consisted of representatives of utility staff, program implementers, industry and trade associations, customers, intervener stakeholders, evaluation consultants, and CPUC staff.

The T1WG's Final Report lead to the Resolution E-4818, dated March 3, 2017, which adopted key definitions concerning alteration and installation types and standards for the

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[7] A preponderance of evidence is the greater weight of the evidence required in a civil (non-criminal) lawsuit for the jury or judge to decide in favor of one side or another. This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of the evidence.

[8] The T1WG agreed to define Repair Eligible as equipment that has failed but could be repaired less expensively than the cost of new equipment, and Repair Indefinitely as equipment demonstrated a history of repair well past its effective useful life.

measure-level energy usage baselines for combinations of these and how they should vary by customer class and program delivery. Resolution E-4818 directed the T2WG to address four issues deferred from the T1WG.[9] The T2WG Final Report lead to Resolution E-4939, dated October 12, 2018, which resolved three of the four issues by adopting:

- A standard practice baseline definition and baseline selection process,
- A single preponderance of evidence determination process for any accelerated-replacement measure type , and
- A small-sized business customer definition providing a simplified pathway to an accelerated replacement measure type preponderance of evidence requirement to determine program influence.

This resolution addresses the remaining issue, the preponderance of evidence requirements of equipment viability and program influence for accelerated replacement projects, as directed in Resolution E-4818 and submitted in the T2WG Final Report identified as "Task 2".[10] As further detailed below, we adopt some elements of the T2WG recommendations while not others.

3. SUMMARY OF T2WG PROCESS AND FINAL REPORT

To avoid confusion during the discussions, the T2WG renamed the Resolution E-4818 approved customer incentive cutoff levels as "low rigor," "medium rigor," and "full rigor" as follows:[11]

a. "Full Rigor" for the largest projects, with incentives greater than $100,000,

b. "Medium Rigor" for projects with incentives between $25,000 and $100,000, and

c. "Low Rigor" for projects with incentives less than $25,000.

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[9] See Resolution E-4818, Ordering paragraph 25.

[10] Track 2 Working Group Final Report on Tasks 1-4, Chapter 5. The Report is available at: https://www.cpuc.ca.gov/general.aspx?id=6442457214.

[11] Rigor in this case reflects the amount of documentation necessary to satisfactorily demonstrate that the energy efficiency program triggered the equipment upgrade. Resolution E-4818 Ordering paragraph 22 originally named categories as Full/Tier 1/Tier 2 Rigor Levels respectively.

Furthermore, during the T2WG meetings, CPUC Staff clarified its expectation that the preponderance of evidence information will include the following three types of evidence or documentation requirements, for which the level of requirements for each component should scale with the customer incentive level:

a. Evidence of the viability of continued equipment operation.[12]

b. Survey, questionnaire, or customer interview to assess program influence.

c. A customer affidavit to ensure the project preponderance of evidence documentation is accurate.

In that regard, the T2WG Report identified five sub-tasks to further refine the preponderance of evidence requirements:[13]

- **Task 2-1, Tier thresholds**—whether the customer incentive cutoff levels developed in T1WG and approved in Resolution E-4818 were sufficient to develop preponderance of evidence requirements that appropriately balanced due diligence with project value and risk.
- **Task 2-2, Evidence for equipment viability**—the documentation requirements at the different customer incentive cutoff levels to demonstrate the equipment viability component of preponderance of evidence requirements.
- **Task 2-3, Evidence for influence**—the documentation requirements at the different customer incentive cutoff levels to demonstrate the program influence component of preponderance of evidence requirements.
- **Task 2-4, Questionnaire administration**—which party would administer a survey, questionnaire, or customer interview to collect information, balancing cost and complexity of administration with the potential impacts of bias.

[12] Viability of equipment operation is the ability of the equipment to remain in service, meeting customer requirements for its remaining useful life.

[13] See T2WG Final Report p.40.

- **Task 2-5, Customer affidavit**—a statement to be signed by the customer to affirm accuracy of the information provided for preponderance of evidence.

The discussion on each of these tasks in the working group is briefly described below.

3.1. Task 2-1, Tier Thresholds

The T2WG discussed whether the customer incentive cutoff level s thresholds developed in T1WG and approved in Resolution E-4818 were sufficient to develop preponderance of evidence requirements that appropriately balanced requirements with project value and risk.

The T2WG accepted the customer incentive cutoff levels as being appropriate and also introduced a "Very Low" rigor incentive level category to be added for projects with small customer incentives that warrant a much less rigorous preponderance of evidence requirement. The T2WG proposed maximum customer incentive threshold for the "Very Low" rigor incentive level in the range of $5,000-$10,000.[14]

Finally, the T2WG Report also proposed a "Full rigor" preponderance of evidence requirements for accelerated replacements that is not within the scope of the T2WG task per Resolution E-4818.[15] We will provide a preponderance of evidence requirements guidance for the Full Rigor customer incentive tier in a later section in this resolution.

3.2. Task 2-2, Evidence of Equipment Viability

The T2WG discussed the documentation requirements to demonstrate the viability of continued equipment operation. The T2WG defined equipment viability by asking "Can the existing equipment continue to operate to meet customer needs?" The T2WG

[14] See T2WG Final Report p.43.

[15] Resolution E-4818 Ordering paragraph 25 directed the T2WG to develop recommendations for what should constitute Tier 1 (customer incentive from $7,500 to $25,000) and Tier 2 (customer incentive from $25,000 to $100,000) Preponderance of Evidence requirements.

identified two classifications of evidence: physical evidence and self-report data collected by a questionnaire administered to the customer.

The T2WG discussed the following examples of physical evidence for equipment viability:

a) Photos and videos.

b) Operating data.

c) Current and past maintenance and repairs history or records, as well as costs.

d) Reliability history and issues.

e) Information on current plans or budgeting for expansions, remodels, replacements.

The T2WG discussion on this topic weighed the need to balance rigorous screening against the value of information for different types or sizes of projects. T2WG participants also wanted to avoid making the preponderance of evidence requirements more complex. For example, collecting documentation of the types of evidence listed above, especially of information not normally collected by the customer or readily available, increases the transaction costs and customer burden. While important to ensure appropriate use of ratepayer funds, participants believe that the cost of evidence acquisition should not outweigh the potential value of the project or program.

The T2WG proposed a customer self-report questionnaire to demonstrate equipment viability. The questions and scoring are available in the T2WG Final Report. [16] The T2WG Final Report also includes a proposed pass/fail scoring mechanism for the questionnaire.

3.3. Task 2-3 Evidence of Program Influence

The T2WG discussed the documentation requirements to assess the energy efficiency program's influence in accelerating the replacement of existing still functioning

[16] See T2WG Final Report, p.48.

equipment. CPUC staff described this component of preponderance of evidence as asking: "Would the customer continue to operate the existing equipment?"[17] In other words, would the customer upgrade the existing equipment to a more energy efficient equipment without the technical, financial, or other influence of the program? The T2WG struggled with the discussion of program influence. The T2WG did agree on the need for a streamlined approach to assessing program influence (especially for small projects). The T2WG proposed self-report questionnaire for program influence assessments by customer incentive level tier referred to as Q4-Q6 of the questionnaire.[18]

3.4. Task 2-4 Questionnaire Development and Administration

The T2WG participants differed in their perspectives on whether the questionnaire assessing equipment viability and program influence should be general or program-specific. The T2WG Final Report Table 5 contains a generalized, statewide questionnaire proposed for all projects with incentives less than $100,000.[19]

The T2WG discussed which party would administer a survey, questionnaire, or interview to collect information, balancing cost and complexity of administration with the potential impacts of bias and financial conflicts of interest. Some participants suggested that the program implementer or the IOU account representative would collect the required information. One T2WG participant suggested that any questionnaire developed by the T2WG should be considered advisory and subject to testing and validation.[20] This participant further suggested that the T2WG identify the guiding principles to be considered in developing a questionnaire and that the formal questionnaire be developed

[17] See T2WG Final Report, p.45.

[18] See T2WG Final Report, p.48.

[19] See T2WG Final Report p.48.

[20] See T2WG Final Report p.46.

by an independent CPUC contractor. CPUC Staff suggested that it is necessary to develop the range of possible types of evidence that should or could be looked for, then engage an expert team with in-depth experience in designing and implementing survey and interview instruments to produce the required instruments.[21]

3.5. Task 2-5 Customer Affidavit

The T2WG discussed a statement to be signed by the customer to affirm the accuracy of the information provided for the preponderance of evidence of accelerated replacement. The T2WG Final Report proposal shows a proposed affidavit statement which varies by the preponderance of evidence customer incentive level Tier.[22] The T2WG debated if the affidavit should include a statement that the customer "declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct." The T2WG discussed whether customers should be subject to consequences related to future energy efficiency program participation if their statements were found to be false.

4. ADOPTED CUSTOMER INCENTIVE LEVEL THRESHOLDS AND PREPONDERANCE OF EVIDENCE REQUIREMENTS FOR CUSTOM PROJECTS ACCELERATED REPLACEMENTS

The Preponderance of Evidence standard used in a civil (non-criminal) case is based on the more convincing evidence and its probable truth and accuracy, and not simply on the amount of evidence. We recognize that program administrators and third-party program implementers desire clarity on how to demonstrate equipment viability and program influence to support accelerated replacement measure type baseline consideration. Our guidance herein provides the minimum expected requirements for the preponderance of evidence of accelerated replacement for custom projects. We wish to

[21] See T2WG Final Report p.47.

[22] See T2WG Final Report p. 52 and 53.

stress the importance that documentation of this supporting information should happen as a project is being developed, it should not be created or re-created after the fact.

4.1. Customer incentive threshold tiers

We adopt the T2WG Final Report recommendation to rename the customer incentive tiered levels to Full, Medium, and Low Rigor tiers and the associated incentive categories as described in the T2WG Final Report.[23] We find that the proposed T2WG Report custom incentive levels tiers satisfy the requirements of (D.) 16-08-019 and Resolution E-4818. It is reasonable to have a tiered approach based on customer incentive levels to determine the required level of documentation to demonstrate preponderance of evidence.

We also will adopt the T2WG Final Report Proposal 2-2, a Tier 0 for projects with incentives less than $7,500.[24] To be consistent in terminology, the Tier 0 is renamed here as the Very Low Rigor tier. Therefore, the adopted Tiers shall be the following:

a) "Full Rigor" tier for the largest projects, with incentives $100,000 and greater,

b) "Medium Rigor" tier for projects with incentives between $25,000 and less than $100,000, and

c.) "Low Rigor" tier for projects with incentives between $7,500 and less than $25,000.

d) "Very Low Rigor" tier for projects with incentives less than $7,500.

We clarify here that project developers (program administrators and third-party program implementers) must not disaggregate custom project measures into multiple "customer applications" that are actually a single activity carried out in phases, or separate the project into multiple applications that act to avoid the customer incentive

[23] See T2WG Final Report Table 4 p. 41.

[24] See T2WG Final Report p.43.

level thresholds. A program administrator will inform CPUC staff in its bi-monthly projects summary list submissions should an activity or project must be split into multiple applications and provide the rationale for CPUC staff's approval.[25] As part of its custom projects review selection process, CPUC staff will assess to ensure that a single project or activity is not disaggregated into multiple customer applications to avoid the customer incentive level thresholds.

Finally, since the T2WG discussions focused only on custom projects, we direct here CPUC staff to convene a stakeholder workshop to determine the appropriate customer rebate or incentive levels for the preponderance of evidence requirements of deemed measures equipment viability and program influence to support an accelerated replacement baseline consideration.

4.2. Preponderance of Evidence Requirements for Equipment Viability for the Very Low, Low and Medium Rigor Customer Incentive Level Tiers

For the Very Low, Low and Medium Rigor customer incentive tiers, we adopt the T2WG Final Report proposed Evidence of Equipment Viability Requirements for custom projects with modifications in Table 5 below.[26]

Table 5 Evidence of Equipment Viability Requirements

Topic	Very Low	Low	Medium
Customer Incentive threshold	Up to $7,500	From $7,500 to $25,000	From $25,000 to $100,000

[25] D.11-07-030 Attachment B **at p.** B-4 directs the utilities to submit bi-monthly summary lists of project applications for CPUC staff to select project applications for review.

[26] See T2WG Final Report p.41.

Physical Evidence of Equipment Viability	None	Photos or videos	Photos or videos, plus project developer collect additional information
Customer Affidavit	Customer Affidavit Statement Required	Customer Affidavit Statement Required	Customer Affidavit Statement Required

The preponderance of evidence requirement for equipment viability includes demonstration of equipment operation and of its ability to remain in service, meeting customer requirements for its remaining useful life. This preponderance of evidence requirement bears the question: "Can the existing equipment continue to operate to meet customer needs?"

We do not adopt the T2WG developed Customer Questionnaire for Equipment Viability for the customer incentive levels in the T2WG Final Report questions Q1-Q3.[27] We appreciate the challenge in crafting questions that lead to unbiased and accurate assessments. The preponderance of evidence requirement for equipment viability must demonstrate physical equipment operations and of its ability to remain in service, meeting customer requirements for its remaining useful life.

For the Very Low Rigor Tier (Incentives less than $7,500), we agree with the T2WG participants that the preponderance of evidence requirement for these projects should be

[27] See T2WG Final Report p.45.

less complex and rigorous than the other three tiers.[28] It is sufficient that for the Very Low Rigor Tier, the requirement is only for the customer to complete the Customer Affidavit Statement. We adopt the T2WG Final Report proposed Customer Affidavit Statement with edits proposed by the Public Advocates Office (PAO) with modification, reproduced below for the Very Low, Low, and Medium Rigor Customer Incentive Level Tiers:[29]

Customer Affidavit, Proposed edits by PAO

The customer or customer representative who completes the ~~POE questionnaire~~ project application will sign an affidavit ~~with some fraction~~ of the following statement ~~depending on the POE Tier Level, as outlined in **Error! Reference source not found.**~~:

~~[1]~~ I, (name), hereby certify that I am authorized to make this declaration as the Customer or as an authorized representative of the Customer (name). ~~[2]~~ By signing below, I certify that the existing equipment being replaced is in operating condition ~~above is true and correct~~ to the best of my knowledge. ~~[3]~~ I acknowledge that misrepresentation will result in a rejection of all or part of the project ~~[4]~~ and that ~~I~~ the Customer may be required to return the incentives associated with this project. ~~[5]~~ I further acknowledge that misrepresentation will result in future projects submitted by the Customer being subjected to additional scrutiny ~~[6]~~ and ~~that repeated offenses~~ may result in Customer probation or suspension from current and future incentive programs.

For the Low Rigor tier (From $7,500 to $25,000), we require information in addition to the customer affidavit statement to answer the question as to whether the existing equipment can continue to operate. We direct that for the Low Rigor tier projects, photos or videos of the operating equipment be collected and a customer also sign the adopted Customer Affidavit Statement. We recognize that some customers will refuse to submit

[28] See T2WG Final Report p.42.

[29] See T2WG Final Report p.54.

photos or videos due to security concerns.[30] However, waiving provisions of required evidence based on customer security concerns should only be allowed when such evidence of currently installed and operating equipment divulges proprietary information or trade secrets. For example, pictures of HVAC equipment or standard off-the-shelf equipment should not be a waived requirement. A site having security constraints cannot have an automatic ability to deny the collection of evidence. The customer has the responsibility to provide evidence as needed to confirm eligibility and support their claims even if others are not able to access the site.

For the Medium Rigor tier (From $25,000 to $100,000), in addition to the customer affidavit statement we direct the project developer to collect additional supporting information to answer the question of whether the existing equipment can continue to operate. The information to demonstrate equipment viability shall include, but is not limited to:

- Photos and videos
- Age of the equipment
- Operating data
- Current and past maintenance and repair history or records, as well as costs
- Reliability history and issues
- Information on current plans or budgeting for expansions, remodels, replacements
- A customer-signed Customer Affidavit Statement

4.3. Preponderance of Evidence Requirements for Program Influence for the Very Low, Low and Medium Rigor Customer Incentive Level Tiers

[30] See T2WG Final Report p.44.

We do not adopt the Customer Questionnaire for the Program Influence requirement for the customer incentive rigor tiers in the T2WG Final Report, questions Q4-Q6.[31] We appreciate the challenge in crafting questions that lead to unbiased and accurate program influence assessments. We confirm that the project developer must collect and assess both evidence supporting and evidence not supporting equipment viability and program influence. We agree with CPUC staff that the T2WG proposed questionnaire includes some questions that could appear to be leading questions.[32] For example, Question 6 in Table 5 of the T2WG Final Report is "The technical information and services provided by the PA team are essential for my decision to approve this project."

In lieu of adopting a questionnaire, we provide the following preponderance of evidence guidance on the minimum information requirements for project developers to document support of program influence for an accelerated replacement for the three customer incentive level thresholds.

For the Very Low Rigor tier, we direct the project developer to collect information from the customer and provide written responses to demonstrate program influence. The information is to include but is not limited to:

1. Describe this project's development, including factors and decision points that led to the customer's decision to replace the existing equipment.
2. Describe the project developer's services provided to the customer and timing of developer's engagement compared to customer's decision-making process.
3. Describe any major repairs performed to the existing equipment, not related to a full system overhaul, in the last 12 months.
4. Describe any maintenance issues for the existing equipment, including maintenance costs, in the last 12 months.
5. Demonstrate that the project is not part of the customer's scheduled maintenance or equipment upgrade. Provide information to demonstrate

[31] See T2WG Final Report Table 4 p.41.

[32] See T2WG Final Report p.49.

that the customer was not going to do this energy efficiency project anyway.[33]

For the Low Rigor tier, we direct the project developer to collect information from the customer and provide written responses to demonstrate program influence. The information is to include but is not limited to:

1. Describe this project's development, including factors and decision points that led to the customer's decision to replace the existing equipment.
2. Describe the project developer's services provided to the customer and timing of developer's engagement compared to customer's decision-making process.
3. Describe any major repairs performed to the existing equipment, not related to a full system overhaul, in the last 24 months.
4. Describe any maintenance issues for the existing equipment, including maintenance costs, in the last 36 months.
5. Demonstrate that the project is not part of the customer's scheduled maintenance or equipment upgrade. Provide information to demonstrate that the customer was not going to do this energy efficiency project anyway.[34]

For the Medium Rigor tier, we direct the project developer to collect information from the customer and provide a written response to demonstrate program influence. The information is to include but is not limited to:

1. Describe this project's development, including the customer's motivating factors for the project development and all factors that the customer considered as it planned, designed, and selected the project to replace the existing equipment.

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[33] Examples may include, but are not limited to, providing documentation on the project's development history or equipment servicing policies that the customer may have, information on the customer's normal replacement, replacement, remodeling and equipment replacement practices, or documentation on known standard efficiency equipment alternatives available in the market or those considered by the customer.

[34] Examples may include, but are not limited to, providing documentation on the project's development history or equipment servicing policies that the customer may have, information on the customer's normal replacement, replacement, remodeling and equipment replacement practices, or documentation on known standard efficiency equipment alternatives available in the market or those considered by the customer.

2. Describe the project developer's services provided to the customer and timing of developer's engagement compared to customer's decision-making process.
3. What is the decision-making process for determining and selecting a specific energy efficiency measure option(s)? What are the customer's criteria in decision-making?
4. Describe any major repairs performed on the existing equipment, not related to a full system overhaul, in the last 24 months.
5. Describe any maintenance issues for the existing equipment in the last 36 months.
6. Demonstrate that the project is not part of the customer's scheduled maintenance or equipment upgrade. Provide evidence that the customer was not going to do this energy efficiency project anyway.[35]
7. What are the customer's barriers (if any) to adopting a new energy efficiency measure? What are its resource constraints (if any)?
8. What are the regulations (e.g., code, standards) applicable to the existing equipment or process and the relevant energy efficiency measure?

4.4. Preponderance of Evidence Requirements for Accelerated Replacements for the Full Rigor Customer Incentive Level Tier

Although the Full Rigor preponderance of evidence requirements for equipment viability and program influence for accelerated replacements was not within the scope of the T2WG activity, we appreciate the T2WG's efforts to propose recommendations in the T2WG Final Report.[36]

[35] Examples may include, but are not limited to, providing documentation on the project's development history or equipment servicing policies that the customer may have, information on the customer's normal replacement, replacement, remodeling and equipment replacement practices, or documentation on known standard efficiency equipment alternatives available in the market or those considered by the customer. .

[36] See T2WG Final Report p.50.

The evidence of program influence in general must demonstrate that an energy efficiency program caused a customer to implement a more costly, more efficient equipment or process than they would have otherwise in absence of the program intervention. Program influence may be in the form of technical assistance and/or financial support. The information may be providing suggestions of alternative designs or products not already under consideration, or analysis of alternatives to demonstrate how the customer requirements can be met or exceeded by selecting an alternative. Qualified financial influence occurs when the availability of incentive support to the customer directly becomes the deciding factor in the selection of a more efficient alternative solution to the one or ones that would otherwise be selected.

The T2WG Final Report did not address at what point in a project's development the preponderance of evidence exercise should occur. Convincing program influence is typically exhibited by the project developer's actual actions and their impacts on a specific customer's selection decision on the technology or process option(s) considered prior to or during the customer's decision-making process. The preponderance of evidence determination should be conducted and documentation collected early in the project development phase when eligibility and measure type are being assessed. If a project fails the program influence preponderance of evidence assessment for accelerated replacement, it may still be eligible as a normal replacement project as long as it conforms with CPUC policy, CPUC staff guidance, and program administrator's program rules. A project developer must avoid "harvesting" a customer that has already planned for implementation activity into their program, because such project decisions happened before the developer can exercise any meaningful intervention. To prevent free-ridership, implementers should not claim influence if their engagement for the specific project does not occur before or during customer's decision-making process, or results in no additional

efficiency improvement over what the customer is planning to do anyway to meet today's needs.[37]

The technology or process option(s) must all meet the functional, technical, and economic needs of the customer. Effective influence is typically demonstrated through legitimate difference made by the project developer in encouraging the customer to do more than what the customer would have done as the current practice. Actions such as technical assistance or financial assistance must happen before or during (not after) the customer's decision-making process of selecting an energy efficient technology or process option. Therefore, documentation must be collected at the program intervention stage to demonstrate what the customer was planning to do prior to when the energy efficiency program intervened in the specific custom project. The documentation needs to demonstrate how the program's (interventions) convinced the customer to accelerate the replacement of the existing equipment or process.

For the Full Rigor customer incentive level tier, in addition to the Customer Affidavit Statement for equipment viability discussed in Section 4.2 in this resolution, we direct the project developer to collect information from the customer and provide a written response to the questions below to demonstrate equipment viability and program influence for the accelerated replacements measure application type. Our guidance described below is also applicable minimum information requirements to support program influence for any measure application type and program delivery strategy in general.[38] The information is to include but is not limited to:

1. Describe this project's development.
2. Describe the customer's main motivating factors for the project development; include all factors that the customer considered as it planned, designed, and

[37] A free-rider is a customer participant who would have taken the more energy efficient action regardless of any program intervention.

[38] Refer to Table 1 in Section 2.5, per the CPUC Resolutions E-4818. Examples of measure application types include normal replacement, new construction, or add-on equipment.

selected the project to replace the existing equipment. This should include the eligible and viable energy efficient measure options considered by the customer and the customer's normal practice in operation and maintenance and availability of records and the range of relevant regulations and resources considered by the customer.

3. Describe a set of problems the customer is trying to resolve, e.g., what are the business needs and wants of production, maintenance, reliability, capacity, competitiveness, productivity, and regulations, etc.?
4. What is the decision-making process for determining and selecting a specific energy efficiency measure option(s)? What are the customer's criteria in decision-making? What are the customer's barriers (if any) to adopting a new energy efficiency measure? What are its resource constraints (if any)?
   Clarify the timing of the customer's decision points and compare them to when the project developer was engaged and interacted with the customer to validate influence on the project.
5. Describe the project developer's services provided to the customer and timing of the project developer's engagement compared to customer's decision-making process. When and how did the program implementers get involved in the specific custom project (e.g., in which stage of the project development), and what information and technical resources did the program implementers bring to the customer during customer's decision-making process for the specific energy efficiency measure option? Describe the customer's decision-making process and points.
6. Describe the age of the equipment along with its estimated remaining useful life and any major repairs performed on the existing equipment, not related to a full system overhaul, in the last 24 months.
7. Describe any maintenance issues for the existing equipment in the last 36 months.
8. What are the regulations or standard practices applicable to the existing equipment or process and the relevant energy efficiency measure?
9. Has the customer updated any of its existing systems? If yes, when and what was it? Explain the reasons for switching to the new measure/system.
10. What is the range of alternative solutions that the customer considered, if any? Describe the range of vendors, equipment efficiency, capacity, and costs.

4.5. Preponderance of Evidence Requirements for Accelerated Replacements Guidance Document Maintenance and Update Process

We direct the CPUC staff to update the existing Preponderance of Evidence guidance document located at the CPUC's Custom Projects Review webpage at: https://www.cpuc.ca.gov/General.aspx?id=4133 with the requirements and guidance adopted herein within 45 calendar days of the effective date of this resolution.[39] Any subsequent updates to the Preponderance of Evidence Guidance Document, beyond those adopted in this Resolution shall conform with the following document maintenance and update process:

1. A draft of any proposed or updated version of the Preponderance of Evidence Guidance Document shall be provided to the service list of R.13-11-005 or its successor proceeding on the CPUC staff's Public Document Area for comment by stakeholders and the public with a minimum comment period of 14-calendar days;[40]

2. After consideration of the comments received on the proposed updates, CPUC staff shall update the proposed version as appropriate, with an explanation of which comments were not adopted and why, and post a new version of the Preponderance of Evidence Guidance Document, which shall supersede the previous version. If the new update version contains any added language covering any newly identified issues or problems, the new version shall have an effective date no less than thirty days after its public posting, but if the update implements any new formally adopted CPUC direction or guidance or is minor in nature (such as correcting an error), the new version shall be effective immediately.

[39] The "Project basis as Early Retirement (ER)/Replace-on-burnout (ROB)/Normal Replacement (NR)/New Construction (NC)/Add-on Retrofit (Ret) and remaining/Effective useful Life (RUL/EUL), and Preponderance of evidence" document.

[40] CPUC Public Documents Area URL: https://pda.energydataweb.com/#!/.

Preponderance of Evidence Guidance Document shall be updated no more than once annually unless the update is for new CPUC direction or guidance or for the correction of errors.

5. COMMENTS

Public Utilities Code section 311(g) (1) provides that this resolution must be served on all parties and subject to at least 30 calendar days public review and comment prior to a vote of the CPUC. Section 311(g) (2) provides that this 30-calendar day period may be reduced or waived upon the stipulation of all parties in the proceeding.

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 Commission's agenda no earlier than 30 days from today.

6. FINDINGS

1. D.16-08-019 ordered that two working groups be convened to address issues related to the implementation of AB 802.
2. Track 2 Working Group (T2WG) participants submitted a report, identifying issues and recommending changes to CPUC rules, on September 7, 2017.
3. Resolution E-4939 resolved three of the four issues from the T2WG Final Report.
4. The preponderance of evidence requirement for equipment viability must include evidence of equipment operation and of its ability to remain in service, meeting customer requirements for its remaining useful life.
5. The evidence of program influence must demonstrate that an energy efficiency program caused a customer to implement a more costly, more efficient equipment or process than they would have otherwise in absence of the program intervention. Program influence may be in the form of technical assistance and/or financial support.
6. It is reasonable that the project developer (program administrator or third-party implementer) collect and assess both evidence supporting and evidence not supporting equipment viability and program influence.
7. The preponderance of evidence determination should be conducted and documentation collected early in the project development phase when eligibility and measure type are being assessed.
8. To avoid confusion, the T2WG renamed the preponderance of evidence guidance customer incentive level tiers in Resolution E-4818 as “low rigor,” “medium rigor,” and “full rigor,” and they are reasonably named as follows:

a. "Full Rigor" for the largest projects, with incentives greater than $100,000,

b. "Medium Rigor" for projects with incentives between $25,000 and $100,000, and

c. "Low Rigor" for projects with incentives less than $25,000.

9. The T2WG proposed "Very Low Rigor" customer incentive level tier for projects with incentives less than $7,500 is reasonable.

10. Developing the preponderance of evidence requirements to demonstrate equipment viability and program influence for the "Full Rigor" customer incentive level tier was not within the scope of the T2WG.

11. It is reasonable that a project developer (program administrator or third-party program implementer) avoid disaggregating custom project measures into multiple customer application that are actually a single activity carried out in phases or separate a project into multiple applications that act to avoid the customer incentive level tier rigor thresholds.

12. It is reasonable that a program administrator informs the CPUC staff should an activity or project must be split into multiple applications and provide the rationale for CPUC staff's approval.

13. It is reasonable that as part of its custom projects review selection process, CPUC staff assess to ensure that a single project or activity is not disaggregated into multiple customer applications to avoid the customer incentive level thresholds.

14. It is reasonable that for the Very Low Rigor tier (Incentives less than $7,500) and the Low Rigor tier (From $7,500 to $25,000), the equipment viability preponderance of evidence requirements should be less complex and rigorous than the other two higher tiers.

15. It is reasonable that, for the Medium Rigor tier (From $25,000 to $100,000), the project developer (program administrator or third-party program implementer) gather additional supporting information to answer the question of whether the existing equipment can continue to operate.

16. The T2WG developed Customer Affidavit Statement as edited by the Public Advocates Office is reasonable with modifications.

17. The T2WG-developed Customer Questionnaire to support equipment viability and program influence is not acceptable as it includes questions that could be interpreted as leading questions.

18. It is reasonable that in lieu of using a questionnaire, we provide guidance on the minimum preponderance of evidence requirements to support 1) program influence for all four rigor customer incentive tiers and 2) equipment viability for the 'Full Rigor' customer incentive level tier.

19. As the T2WG discussions focused on custom projects, it is reasonable that CPUC staff convene a workshop to determine the appropriate incentive rigor level tiers and the information requirements for preponderance of evidence of deemed measures equipment viability to support an accelerated replacement baseline consideration.
20. It is reasonable to set a process to maintain and update the Preponderance of evidence Guidance for accelerated replacement measure type.

THEREFORE, IT IS ORDERED THAT:

1. The tiers and associated customer incentive levels for the preponderance of evidence requirement for the accelerated replacement measure application type is adopted herein as follow:

   a. "Full Rigor" tier for the largest projects, with incentives $100,000 and greater,

   b. "Medium Rigor" tier for projects with incentives between $25,000 and less than $100,000, and

   c. "Low Rigor" tier for projects with incentives between $7,500 and less than $25,000.

   d. "Very Low Rigor" tier for project with incentives less than $7,500.

2. A program administrator must avoid disaggregating custom project measures into multiple customer application that are actually a single activity carried out in phases or separate a project into multiple applications that act to avoid the customer incentive level thresholds. A program administrator will inform CPUC staff in its bi-monthly projects summary list submissions should an activity or

project must be split into multiple applications and provide the rationale for CPUC staff's approval.

3. For the, Very Low, Low, and Medium Rigor customer incentive tiers, we adopt the evidence of equipment viability requirements in Table 5 of this Resolution for custom projects.

4. We adopt the use of the Customer Affidavit Statement as modified as a requirement to support equipment viability for the Very Low, Low, Medium, and Full Rigor customer incentive level tiers.

5. Program administrators shall follow the minimum requirements guidance as described in Section 4.4, Preponderance of Evidence Requirements for Accelerated Replacements for the Full Rigor Customer Incentive Leve Tier in this resolution.

6. CPUC staff shall convene stakeholder workshop(s) within 90 calendar days from the effective date of this resolution to determine the appropriate incentive level tier and informational requirements for the preponderance of evidence of deemed measures equipment viability and program influence to support an accelerated replacement baseline consideration.

7. CPUC staff shall update the existing Preponderance of Evidence Guidance Document to include the appropriate incentive tier levels and informational requirements for preponderance of evidence of deemed measures equipment viability and program influence to support an accelerated replacement baseline consideration.

8. CPUC staff shall update the existing Preponderance of Evidence Guidance Document with the guidance in this resolution within 45 calendar days from the effective date of this resolution and post the updated guidance document on the CPUC website[41]. CPUC staff shall notify the service list of R.13-11-005 or its successor proceeding of the availability of the updated Preponderance of Evidence Guidance Document.

9. We adopt the preponderance of Evidence Guidance Document maintenance and update process herein for future updates to the Preponderance of Evidence Guidance Document.

[41] https://www.cpuc.ca.gov/General.aspx?id=4133.

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 January 14, 2021; the following Commissioners voting favorably thereon:

_____

Rachel Peterson
Acting Executive Director