



May 9, 2019

Via U.S. Mail and E-Mail (EDTariffUnit@cpuc.ca.gov)

California Public Utilities Commission

Attention: Tariff Unit

505 Van Ness Avenue

San Francisco, CA 94102

RE: Advice Letter (AL) 3992-E (Southern California Edison) (Market-Based Incentive Pilot)

PROTEST OF CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL

Dear Energy Division Tariff Unit:

On April 19, 2019, Southern California Edison ("SCE") filed Advice Letter ("AL") 3992-E requesting approval of its proposed Market-Based Incentive ("MBI") Pilot. The California Efficiency + Demand Management Council (the "Council") appreciates the opportunity to respond to the advice letter filing, and hereby submits this Protest¹ on the grounds that the MBI pilot:

- Contradicts the California Public Utility Commission's ("CPUC's" or "Commission's") Energy Efficiency Rolling Portfolio and other orders
- Inappropriately undermines Commission-approved resource acquisition mechanisms
- Unjustly takes advantage of third-party work product without compensation
- Would collect misleading and inaccurate data which inappropriately would credit the MBI pilot with results attributed to other efforts, and thereby misinform the Commission, future pilots and any future efficiency acquisition programs that the Commission might approve on the basis of the MBI pilot results
- Would be discriminatory, in that it effectively bars third-party implemented projects

¹ This Protest is timely submitted pursuant to General Order 96-B, Rules 3.11 and 7.4, and the instructions included in AL 3992-E. AL 3992-E states that protests "must be received no later than 20 days after the date of this advice letter." (AL 3992-E, at p. 9) which reflects the requirements of Rule 7.4.1 of General Order 96-B.

Background

The Council is a statewide trade association of non-utility companies that provide energy efficiency, demand response and data analytics services and products in California.² Our member companies employ many thousands of Californians throughout the state, including demand response and grid services technology providers, implementation and evaluation experts, energy service companies, engineering and architecture firms, contractors, financing experts, workforce training entities, and manufacturers of energy efficiency products and equipment. The Council's mission is to support appropriate demand response and energy efficiency policies, programs, and technologies to create sustainable jobs, long-term economic growth, stable and reasonably priced energy infrastructures, and environmental improvement.

The Council has been an active participant in the Energy Efficiency Rolling Portfolio proceeding (R.13-11-005) as well as the Energy Efficiency Business Plans proceeding (A.17-01-013 et al.).

Introduction/Grounds for Protest

A. Overview

The Council appreciates the thought and effort that SCE has devoted to the development of the proposed MBI Auction Mechanism. The development of this pilot is a direct result of the frustration that SCE has had, as have all other market participants, with the existing Custom Review Process. This dysfunctional process has led to the significant decline in approved industrial energy efficiency projects over the past 5 years in California. SCE has “experienced a 90 percent decrease in net energy savings from 2014 to 2018” from its large business customers as noted in the Advice Letter.

The Council and our members appreciate SCE's intent to address this frustration and revitalize custom projects as an effective means to achieve efficiency savings. We agree that efficiency savings will be key to achieving California's climate and energy goals, and that reforms are needed to unleash potential savings. To this end, the Council has worked for several years to address the underlying issues through numerous venues, including Commission working groups proceedings, and as a last resort through the state legislature, which resulted in passage for Senate Bill (“SB”) 1131, which has yet to be implemented. We look forward to continuing to work with stakeholders, including SCE, to seek out solutions for the Custom Review Process.

² Additional information about the Council, including the organization's current membership, Board of Directors, antitrust guidelines and code of ethics for its members, can be found at www.cedmc.org. The views expressed by the Council are not necessarily those of its individual members.

While we applaud SCE's effort, as well as its creativity in proposing means to overcome barriers, the structure that SCE proposes for this pilot would lead to falsely inflated results, taking unjustified credit for prior work undertaken by third parties. This flawed approach would contravene prior Commission precedent and policy, and undermine ongoing resource acquisition pursuant to Commission orders. The Commission, in accordance with the rules and standards governing advice letter review, must reject the Advice Letter.

B. The SCE Pilot lacks a mechanism to identify projects supported by third parties under existing contacts

As stated in the Advice Letter, one of the most important concepts the MBI pilot is intended to test is whether the largest of business facilities "require only the financial influence of the [customer] incentive" to undertake efficiency projects, with no need for any additional intervention or technical assistance. Unfortunately, as proposed, the MBI pilot would encompass businesses and projects that have already benefitted from the time and expertise of third parties. As a result, projects likely to win MBI pilot bids and ultimately be implemented successfully would reflect the work of those third parties, and not just the effect of the financial incentives. To the extent that the MBI pilot is credited with successes due in any significant part to third party work, that credit would be underserved, and would provide a false premise for development of future resource acquisition. Successful replication, scale, and adoption of the pilot methodology would simply be unattainable, as projects bid into future auctions would not have the benefit of the "leg up" from third party preparatory work.

For the pilot to honestly test the financial influence of its proposed variable customer incentives, the MBI pilot must contain an appropriate mechanism to gather and document the extent to which third party implementers were involved with the bidding companies and the proposed project(s). Projects that benefited from third parties should then be excluded from the pilot, or appropriate financial adjustments must be made, as discussed further below.

C. The SCE Pilot makes third party participation nearly impossible to achieve, and lacks a mechanism to provide just compensation for past work.

The MBI pilot structure makes it arduous, if not completely impossible, for third parties to participate in the program. Under existing third party SCE contracts, at no point does the third party form a contract with, or receive payment directly from, the customer. Rather, the third party works with customers to provide a suite of technical services, including project development, approval, implementation, verification; payment for these services comes exclusively from SCE. This industry standard practice is ignored in the pilot. It would not be possible for third parties to create, negotiate, and execute contracts directly with customers in the pilot timeframe, nor is reasonable to

presume that the customers, who are accustomed to receiving these services from third parties at no cost to themselves, would spend resources to negotiate and execute any such contracts. Since many of the customers targeted by this pilot have already received technical third party assistance to develop either the entire scope or a portion of the scope of work likely to be bid into the pilot, it would also require the customer to pay for work that may have been already been completed, making it even more unrealistic to suggest that the MBI pilot would allow third parties to participate in the pilot through voluntary agreements with customers; the customers would have no reasonable incentive to pay for work already completed.

By structuring third party participation in this fashion and barring direct participation in the pilot, SCE eliminates any opportunity for third parties to receive payment for the technical support they provided to those qualifying customers. The unjust enrichment that would result is incompatible with the Commission's rules and policies.

D. SCE's Pilot Violates the Commission's order to *increase opportunities third party participation (2. Violates statue or Commission order)*

In Decision ("D.") 16-08-019, the Commission required each utility program administrator to develop business plans providing for third parties to supply at least 60 percent of their rolling portfolios by the end of 2020. This decision sent a clear message that the future role of the program administrator should focus on the "design and management of the energy efficiency portfolio overall, and less on the individual program design and implementation." To achieve this 60% goal, the Commission further developed the Rolling Portfolio Solicitation Process for Energy Efficiency programs in D. 18-01-004. This solicitation process is intended to stimulate third parties to submit innovative ideas and proposals in each sector, using the power of the competitive market to increase performance and decrease price. The Commission made this point clear by stating that "[i]n cases where utilities propose to continue staffing program design and/or delivery functions with utility personnel, they should explain why this continues to be necessary."³ The MBI pilot fails to meet this requirement, offering no explanation for effectively excluding third parties or for retaining resulting procurement for its own core portfolio. This approach, which directly conflicts with the Commission's express direction as well as its long-term vision for the efficiency market, cannot be approved through an Advice Letter.

We further note that the MBI Pilot is being proposed in the middle of the solicitation process for SCE's Industrial Sector, which has suffered numerous delays, and in which similar proposals may have been submitted. The prospect for this pilot to undermine the solicitation process could not be more serious. The solicitation process has attracted

³ D.16-08-019, at p. 17.

significant initial investment, with many companies devoting substantial time and resources to developing proposals. The solicitation process, and the long-term health of the market, could easily fail if a pilot or other competing acquisition mechanism can take unjust advantage of work done by third parties, or capture the most lucrative and easily harvested projects, leaving the more complex and less profitable projects to third parties. This pilot does not offer sufficient benefits to risk the failure of policies clearly established and directed by the Commission in D. 16-08-019 and D. 18-01-004

Conclusion and Relief Requested

The Council again appreciates this opportunity to provide its concerns, as well as the intent of SCE to propose solutions to long-standing issues associated with project review. To honor that intent, while ensuring (i) compliance with the Commission's orders and policy direction, (ii) just and reasonable compensation to third parties for their work, and (iii) that the data from the pilot is accurate, replicable and reliable, rather than distorted due to the inclusion of work that had already been completed but that was not credited, we ask that the Commission rejects the MBI pilot program as proposed, and directs SCE to modify or supplement AL 3992-E to meet the following requirements:

- Clearly document projects that are submitted with past third party support, and either exclude those projects from the pilot or provide appropriate compensation to the third parties for all technical assistance work contributed to the project, to accurately inform future programs;
- Allow third parties to directly participate in the pilot program, under their existing third party contracts with SCE; and
- Comply with the Commission's direction to otherwise increase opportunities for third party participation.

Respectfully submitted,

May 9, 2019

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cc: Courtesy Electronic Service to Service Lists in R.13-11-005 (Energy Efficiency Rolling Portfolio) and A.17-01-013, et al. (Energy Efficiency Business Plans)