

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

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

Rulemaking 13-11-005
(Filed September 30, 2019)

**OPENING COMMENTS OF THE CALIFORNIA EFFICIENCY + DEMAND
MANAGEMENT COUNCIL ON ADMINISTRATIVE LAW JUDGE'S RULING
ISSUING DRAFT REVISED RULEBOOK FOR NORMALIZED METERED ENERGY
CONSUMPTION (NMEC) AND INVITING COMMENTS ON POPULATION-LEVEL
RULES, MEASUREMENT METHODS**

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Nate Kinsey, Regulatory Affairs Manager
California Efficiency + Demand Management Council
1111 Broadway Suite 300
Oakland, CA 94612
626-691-5445
policy@cedmc.org

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I. INTRODUCTION

The California Efficiency + Demand Management Council (the “Council”) appreciates this opportunity to submit its Opening Comments on the *Administrative Law Judge’s Ruling Issuing Draft Revised Rulebook for Normalized Metered Energy Consumption and Inviting Comments on Population-Level Rules, Measurement Methods, and Calculation Software* (“ALJ’s Ruling”), issued in this proceeding on August 29, 2019. These Opening Comments have been timely filed and served pursuant to the Commission’s Rules of Practice and Procedure and the instructions contained in the ALJ’s Ruling.

We applaud and recognize the diligent work conducted by Common Spark, Energy Division staff, and industry stakeholders in developing these draft recommendations. The development and implementation of these rules is uncharted territory for ratepayer programs but is a needed necessary step forward towards achieving the state’s goals and align with Senate Bill (“SB”) 350 (De Leon, 2015) desire to use meter-based savings to account for energy efficiency savings. The comments that follow work to align the draft rulebook with the legal requirements of Assembly Bill (“AB”) 802 (Williams, 2015), simplify the regulatory process overseeing the implementation of Normalized Metered Energy Consumption (“NMEC”) programs, and ensure NMEC can contribute to California’s ambitious climate and energy goals.¹

¹ These opening Comments are timely filed pursuant to the California Public Utilities Commission (“CPUC” or “Commission”) Rules of Practice and Procedure and the ALJ Ruling.

II. THE BACKGROUND

The Council is a statewide trade association of non-utility businesses 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. They include 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.

III. COMMENTS ON SPECIFIC QUESTIONS POSED IN THE ALJ'S RULING

- 1. M&V Plans: The rulebook includes requirements for two types of M&V plans – a bid-level M&V Plan to be submitted by third-party bidders as part of their bid, and a program-level M&V plan to be developed by PAs for inclusion in Implementation Plan and advice letter submissions. Is there any additional information that should be required as part of either the bid-level or program-level M&V plans? And conversely, are any of the required items or requested detail unnecessary for inclusion?**

The Council does not have a response at this time but reserves the right to comment on parties' responses in Reply Comments.

- 2. Population-level NMEC rules include program eligibility thresholds based on FSU levels –with an alternative advice letter option if those thresholds are not met. Is the threshold for FSU set at an appropriate level? If not, please provide alternative(s) and accompanying rationale. Are there other eligibility requirements, such as estimated percent savings or number of sites, that should be included for population-level NMEC programs?**

The Council fundamentally disagrees with the Commission on the establishment of program eligibility thresholds and believes by proposing them the Commission is reaching beyond its jurisdictional authority. We believe the program eligibility thresholds should be established by the Program Administrators and the third-party providers as part of the existing Rolling Portfolio process. The Program Administrators are tasked with designing cost-effective

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 <http://www.cedmc.org>. The views expressed by the Council are not necessarily those of its individual members.

portfolios of programs that achieve the Commission’s established energy efficiency goals, and should not be restricted by limiting design criteria or approval steps for NMEC Programs. We request the Commission eliminate the eligibility thresholds and allow for programs to be approved as part of the existing Rolling Portfolio process.

- 3. Pay-for-Performance (P4P): Population-level NMEC rules include a 75 percent P4P threshold for PA program payments, with an alternative advice letter option if the threshold is not met. Is this P4P threshold appropriate? If not, please recommend a different P4P threshold and accompanying rationale, or another approach for ensuring that ratepayer funds are spent on programs that will yield cost-effective savings.**

The Council fundamentally disagrees with the Commission on the establishment of contractual requirements for P4P programs. We believe PAs, and third-party providers should be empowered to negotiate contractual details that appropriately match the program design. We request the Commission eliminate these payment incentive requirements and allow for programs to be approved as part of the existing Rolling Portfolio process.

- 4. NMEC methods and software: The rulebook requires that any proprietary NMEC method or software used to determine payable or claimable savings must go through a custom approval process, and then the PA must submit an advice letter for the program specifying details of the proprietary method or software. NMEC methods and software that are public/open-source are not subject to this requirement. Is this requirement appropriate? If not, please provide an alternative approach(es).**

As the industry association that represents a large number of market participants that California is counting on to deliver the programs and services that will achieve California’s greenhouse gas (“GHG”) emission reduction, clean energy and economic goals, we are following this issue with great interest but have to report that there is no consensus among our stakeholders. In fact, there is a striking diversity of opinion on this issue that is uncommon within our industry. We feel compelled to report this difference of opinion to the Commission as you consider adoption of the most appropriate process. We trust that the Commission will take all viewpoints into consideration during its deliberations and come up with a fair and equitable resolution. In this regard, we ask that the Commission grant requests from individual Council members who have worked in good faith to seek a unified Council position and who now wish to seek party status to share their important comments and perspectives on this issue now that our industry association’s effort to find consensus among members has concluded unsuccessfully.

5. Should the guidance for PA-administered and implemented population-level NMEC programs be different than the guidance for population-level NMEC programs implemented by third-parties? If so, in what way(s)?

The guidance for both Program Administrator and third-party programs for population-level NMEC programs should be the same. If Program Administrators are allowed to provide additional guidance on top of the guidance provided by the Commission, it will create unnecessary jurisdictional rules that will hamper the development and deployment of NMEC programs throughout the state. Additionally, the Council requests that NMEC rules be adopted at a statewide effort to ensure clarity across Program Administrator boundaries. This is in alignment with the Commission's broader push to provide statewide clarity in the workpaper process.

6. This version of the NMEC rulebook is intended to enable the first large batch of NMEC programs to launch successfully (beyond the limited number of current NMEC programs). What are the most critical items the Commission should consider for future NMEC program rules and policy? For example:

- a. Can NMEC methods and software used for payable and claimable savings determinations function as a set of standard weights and measures for providing better clarity to the market and/or informing the Commission's ex-post evaluations? If so, what approaches should be considered for future rules that would enable this?**

The Council believes clarifying how NMEC methods and software can be used for payable and claimable savings soon and will be essential for the long term success of NMEC programs. We believe an automated validation process should improve over time and provide an ever more accurate benchmark for all aspects of NMEC programs as these tools and technologies mature. We think that payable and claimable savings should strive to be as similar as process to simplify and streamline the ex-post evaluation process. However, we recognize that there are limitations and practical reasons as to why they cannot be same. For example, calculating claimable savings estimates requires accounting and validation for changes that occur during the period between when payable savings and claimable savings are calculated. The issues could be occurrences such as non-routine events and customers becoming ineligible. Additionally, we request that the Commission define payable, claimable, and ex-post savings to enable the use of NMEC software for this purpose.

b. Additional pathways for streamlining the NMEC program process and encouraging program innovation while protecting ratepayer funds

The Council does not have a response at this time but reserves the right to comment on parties' responses in Reply Comments.

IV. ADDITIONAL COMMENTS ON THE DRAFT RULEBOOK

1. The Proposed Rulebook Violates AB 802 (Williams 2015) by Restricting the Ability to Count All Available Energy Efficiency Savings.

As noted in the draft rulebook, the bill text of AB 802 Section 6.381.2(b):

Authorize[s] electrical corporations or gas corporations to provide financial incentives, rebates, technical assistance, and support to their customers to increase the energy efficiency of existing buildings based on all estimated energy savings and energy usage reductions, taking into consideration the overall reduction in normalized metered energy consumption as a measure of energy savings. Those programs shall include energy usage reductions resulting from the adoption of a measure or installation of equipment required for modifications to existing buildings to bring them into conformity with, or exceed, the requirements of Title 24 of the California Code of Regulations, as well as operational, behavioral, and retro-commissioning activities reasonably expected to produce multi-year savings."

As currently proposed, the updated Rulebook eliminates the ability of the industry to meet the letter of the law of measuring all available savings in the following ways:

- In Section III.1.C.2, the Rulebook states that a "Project must be adjusted for normal replacement measures included in the scope of the project." This is counter to AB 802 stated language that "*all estimated energy savings and energy usage reductions, taking into consideration.*" We request that this requirement be removed from the rulebook.
- In Section III 1.D.2a, the Rulebook states that "*Estimates should use DEER or workpaper values wherever possible.*"³ By requiring DEER or workpaper values to be used whenever possible the Commission is continuing to deem energy savings that represent the average values of an individual site's energy reduction potential. Programs should be allowed to use all measures and estimates based on calculations that reflect the actual operation of a given site, not on the industry average to align with AB 802's language of counting all available savings.

³ DEER stands for Database of Energy Efficiency Resources.

- In Section II 5.E.1 the Rulebook states that “Measures currently allowable through the deemed and calculated energy efficiency program,” are permissible. We believe that this language fundamentally constrains NMEC potential. It limits measures to only currently approved measures and would effectively yield no additional achievable energy efficiency and therefore not warrant the CPUC to revise its statewide savings goals. We request that this sentence be changed to read that: *“NMEC programs shall include energy usage reductions resulting from the adoption of a measure or installation of equipment required for modifications to existing buildings to bring them into conformity with, or exceed, the requirements of Title 24 of the California Code of Regulations, as well as operational, behavioral, and retrocommissioning activities reasonably expected to produce multi-year savings Arbitrarily limiting the eligibility to current eligibility is in violation of AB 802.”*
- In Section III 1.B, the Rulebook states that Option C of the International Performance Measurement and Verification Protocol (“IPMVP”) should be used to test the feasibility of the NMEC Approaches. By requiring that project feasibility be verified using only Option C, the Rulebook is eliminating all savings that cannot achieve a minimum of 10% energy savings. This conflicts with AB 802 language requiring all savings to be accounted for. Additional Option C, guidance is only for monthly data, not the granular interval data we have available today. As such we request that at a minimum Option D of IPMVP be included in the Project Feasibility assessment and urge the Energy Division to study additional options to test NMEC feasibility.
- Additionally, we believe that the Site NMEC rules as written limit the ability of site-based programs to launch and generate savings. We request the Commission launch a Site NMEC working group in the same fashion as the Population NMEC working group to allow the industry and market actors to develop recommendations to improve the existing rules.

By making these changes, the Commission will begin to align the NMEC Rulebook with AB 802 language and make it possible for the industry to capture all available savings in the marketplace.

V. CONCLUSION

The Council appreciates the Commission's consideration and the opportunity to provide comment on the critical issue of NMEC.

Dated: September 30, 2019

Respectfully submitted,

/s/ NATE KINSEY

Nate Kinsey, Regulatory Affairs Manager
California Efficiency + Demand Management Council
1111 Broadway Suite 300
Oakland, CA 94612
626-691-5445
policy@cedmc.org