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 ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S RULING SEEKING COMMENT ON REFORMING OR ELIMINATING THE EFFICIENCY SAVINGS AND PERFORMANCE INCENTIVE MECHANISM

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I. INTRODUCTION

The California Efficiency + Demand Management Council (the "Council") appreciates this opportunity to submit these Opening Comments on the Assigned Commissioner and Administrative Law Judge's Ruling Seeking Comment on Reforming or Eliminating the Efficiency Savings and Performance Incentive ("ESPI") Mechanism, issued in R.13-11-005 on March 18, 2020 ("March 18 ACR"). These Opening Comments are timely filed and served pursuant to the Commission's Rules of Practice and Procedure and the instructions accompanying the March 18 ACR.

II. 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.[1] Our member companies employ many thousands of Californians throughout the state. They include energy efficiency ("EE"), demand response ("DR"), 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 EE products and equipment. The Council's mission is to support appropriate EE and DR policies,

[1] 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.

programs, and technologies to create sustainable jobs, long-term economic growth, stable and reasonably priced energy infrastructures, and environmental improvement.

III. THE COUNCIL'S COMMENTS ON THE MARCH 18 ACR GENERALLY

The Council appreciates the opportunity to comment on this Ruling, and lauds the Commission's efforts to continue to refine and improve energy efficiency policies. We believe that ESPI remains a useful tool to incentivize the investor-owned utilities ("IOUs") to meet and exceed the energy efficiency goals set by the Commission. However, it is the Council's appraisal that while ESPI is conceptually sound, in practice it has become an institutional barrier to innovation. We appreciate many of the Public Advocates Office's ("PAO's") assertions in calling for a review of ESPI, but the Council believes ESPI can still play an important role in driving procurement of valuable EE. Therefore, the Council encourages the Commission to continue utilizing performance incentives to encourage achievement of energy efficiency goals – a practice employed by many other states– but with some modifications to allow it to function most effectively under current and future EE paradigms.[2] In short, ESPI should be continued, but should be modified to represent a means of incentivizing innovation, rather than merely compliance.

IV. THE COUNCIL'S RESPONSES TO QUESTIONS RELATED TO WHETHER THE ESPI MECHANISM SHOULD BE RETAINED OR ELIMINATED.

2. **Provide empirical evidence that ESPI has motivated utility investors and managers to prioritize energy efficiency differently from what priorities would have been absent ESPI, or has improved the performance of energy efficiency portfolios overall. Alternatively, provide your comments on the outcomes summarized in Section 5 of this ruling.**

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

3. **Have the policy and/or goals outlined in D.13-09-023 as the justification for ESPI changed since that decision was issued? If so, how? In identifying such changes, be specific as to the categories of ESPI awards relevant to each policy change.**

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

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[2] ACEEE, "Snapshot of Energy Efficiency Performance Incentives for Electric Utilities", at p. 3. December 2018. Available at: https://www.aceee.org/sites/default/files/pims-121118.pdf

4. **Is ESPI still aligned with meeting the State's or the Commission's objectives? If not, be specific as to what award categories of ESPI are no longer aligned with which Commission objectives.**

Yes. The Council believes that ESPI represents an important means of incentivizing procurement of energy efficiency, particularly given EE's position as first in the loading order. ESPI in its current guise appears to represent more of a reward mechanism for good behavior on the part of IOUs in working with Energy Division to meet ESPI reporting requirements, rendering it out of step with the current realities facing EE portfolios.[3] With the many downward pressures placed on achieving the Commission's and State's objectives since the development of ESPI, such as higher cost-effectiveness thresholds and the sunsetting of lighting and other measures due to EE program effectiveness and market transformative forces, ESPI can still represent an important means of incentivizing efficiency activities that achieve portfolio targets.

Further, ESPI could be modified to encourage procurement above and beyond Commission portfolio targets which we believe will ultimately foster innovation. For example, Massachusetts, Illinois, and Rhode Island use an incentive mechanism to reward achievement beyond goal attainment.[4] Given indications that –despite California's policy leadership in combating climate change– the state is not on track to meet its 2030 climate goals until 2061, retaining and modifying ESPI to effectively incentivize achieving and overachieving portfolio savings targets provides a valuable means of generating EE savings to get our state back on track.[5]

5. **Are shareholder incentives an appropriate and effective use of ratepayer resources dedicated to obtaining energy savings/?**

Yes, but with modifications. See the Council's response to Question 4.

[3] See, for example, Attachment 5 and 6 of D.13-09-023.
[4] ACEEE, "Snapshot of Energy Efficiency Performance Incentives for Electric Utilities", at p. 10. December 2018. Available at: https://www.aceee.org/sites/default/files/pims-121118.pdf
[5] Next 10, "2019 California Green Innovation Index", at p. 4. October 2019. Available at: https://www.next10.org/sites/default/files/2019-10/2019-california-green-innovation-index-final.pdf

6. **Given the current management structure of energy efficiency programs, are shareholder incentives, in any form, necessary to ensure the achievement of energy savings? Should the Commission eliminate shareholder incentives for energy savings completely? Should individual ESPI award categories be eliminated? Why or why not?**

Yes, the Council believes that shareholder incentives remain necessary. See the Council's response to Question 4.

7. **Are shareholder incentives still necessary to ensure the planning and delivery of robust energy efficiency programs, apart from specific achievement of net energy savings? Why or why not?**

Yes, the Council believes that shareholder incentives remain necessary. See the Council's response to Question 4.

V. THE COUNCIL'S RESPONSES TO QUESTIONS RELATED TO POTENTIAL MODIFICATIONS TO THE ESPI MECHANISM.

8. **What should be the goals of shareholder incentives for utilities for energy efficiency now, if different from those outlined in D.13-09-023?**

In addition to the Council's response to Question 4, we encourage the Commission to modify ESPI to be more goal-oriented as compared to those outlined in D.13-09-023. For example, Attachments 5 and 6 of that Decision qualitatively score utilities on a 1-5 scale based on their ability to meet Ex Ante Review requirements, as well as including a dispute resolution. In spite of the best intentions, applying a qualitative compliance metric to this process is more likely to incentivize the IOUs to be relatively conservative in advocating for positions that differ from Commission staff and/or consultants. For example, because of this scoring approach our members have seen increased administrator reluctance to pursue and advocate for new workpapers as compared to before the qualitative scoring was instituted. Any regulated industry requires healthy, respectful, and vigorous debate among stakeholders in order to evolve and thrive. We are concerned that this qualitative criterion is stifling in this regard.

In addition to the obvious administrative issues this approach elicits, it also is in direct contrast to the focus on innovation in shifting to third-party implementation of EE programs (described further in our response to Question 11), and is particularly harmful at a time when portfolio cost-effectiveness thresholds set by the Commission are unreasonably high. It is critical that the Commission modify ESPI to foster innovative achievement and potential overachievement of EE goals without creating a mechanism that merely rewards compliance.

9. If the Commission continues to authorize incentives to utility shareholders, how should the incentive mechanism be structured to make it more effective in achieving its goals? Should the overall dollar level of ESPI award potential, as a motivation factor, be reevaluated?

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

10. Should the Commission connect utility performance relative to the ABALs in terms of goal attainment and cost-effectiveness to the ESPI awards? If so, how?

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

11. How should the incentive mechanism be structured in light of the shift toward more third-party designed and implemented programs?

The Council encourages the Commission to examine disbursement of ESPI funds to third-party program implementers ("3Ps" or "3P programs"). In the current structure of 3P program delivery, implementers take on a significant amount of risk in delivering EE savings. While the IOUs are financially insulated from the downsides, 3P implementers have minimal incentive beyond what is contractually stipulated for even a perfectly implemented program that often takes significant time to evaluate.

Given that one of the goals for 3P programs is fostering innovation, it makes financial sense to provide at least some portion of ESPI disbursements as an incentive for savings attainment at or above goals.[6] Doing so will offset the lopsided risk paradigm currently in place, while fostering a vibrant marketplace of program implementers. Moreover, in light of the COVID-19 crisis disbursing some portion of incentive funds to 3Ps can represent an important stimulus to provide both valuable EE savings to impacted ratepayers as well as valuable jobs to our economy during a deep recession.

[6] D.16-08-019, at p. 70.

12. How should the incentive mechanism be structured for the new, more centralized management of statewide energy efficiency programs?

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

13. Should utilities whose ratepayers are funding, but who are not managing, statewide programs, continue to receive an incentive payment for those contributions? Why or why not?

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

14. How should the incentive mechanism be structured in light of the shift towards NMEC as a measurement and verification method?

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

15. What metrics, if any, should be used to measure the success of non-resource activities?

While the Council does not offer a one-size fits all metric for measuring the success of non-resource programs, we do encourage the Commission to develop incentives for such programs. As seen in the revised ABALs presented by PG&E and SCE, significant cuts were made to non-resource programs to increase portfolio cost-effectiveness.[7] While discussions of cost-effectiveness issues are outside the scope of this Ruling, it is nonetheless critical that the Commission provide a means of remuneration for non-resource programs that might generate minimal savings but accomplish valuable objectives. Workforce, education, and training ("WE&T"), marketing, education, and outreach ("ME&O"), local government partnerships ("LGP"), and online marketplaces represent broad initiatives with extremely valuable outcomes for achieving Commission and State EE goals, but that are suffering under the current cost-effectiveness regime since they do not generate savings. While the Council is not in a position at this time to offer any specific metrics necessary to measure success of such programs, they should nonetheless be developed on a case-by-case basis to enable these programs to benefit from ESPI disbursements that help offset the unfortunate recent budget reductions and cancellations.

[7] ABAL workshops held March 16, 2020.

16. What metrics, if any, should be used to measure the success of codes and standards activities?

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

17. How can the ESPI review process be revised to reduce administrative burden?

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

18. Provide any other recommendations for changes to the ESPI mechanism.

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

VI. THE COUNCIL'S RESPONSES TO OTHER ESPI-RELATED QUESTIONS.

19. How should your recommended changes to, or elimination of, ESPI affect the EM&V budget and Commission staff and/or evaluator activities? Be specific in your answer.

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

20. If the Commission modifies or eliminates ESPI, when should the changes take effect?

The Council encourages the Commission to move quickly to implement changes to ESPI, so that disbursements can provide timely relief in light of the COVID-19 crisis. Implementing modifications to ESPI by the end of 2020 at the latest, and retroactively applying them to PY2020 activities, can be a valuable means of incentivizing additional EE activities during this economic downturn.

21. Are there other related items to the ESPI that the Commission should consider as part of this review?

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

VII. CONCLUSION

The Council appreciates the Commission's consideration of our comments and encourages the modification of ESPI to incentivize procurement of valuable energy efficiency.

We look forward to continuing to represent our members as we participate in efforts to develop the next evolution of ESPI.

Dated: April 29, 2020

Respectfully submitted,

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