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 November 14, 2013)

REPLY COMMENTS OF THE CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL ON ADMINISTRATIVE LAW JUDGE'S RULING SEEKING COMMENTS REGARDING NATURAL RESOURCES DEFENSE COUNCIL MOTION

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I. INTRODUCTION

The California Efficiency + Demand Management Council ("The Council") appreciates this opportunity to submit these Reply Comments on the Administrative Law Judge's Ruling Seeking Comments Regarding Natural Resources Defense Council Motion ("ALJ Ruling"), issued in R.13-11-005 on July 31, 2020. These Reply Comments are timely filed and served pursuant to the Commission's Rules of Practice and Procedure and the instructions accompanying the ALJ Ruling.

II. OVERVIEW

The Council appreciates the opportunity to offer its Reply Comments to the Opening Comments filed by parties on September 1, 2020 in response to the April 24, 2020 Natural Resources Defense Council ("NRDC") Motion ("NRDC Motion") regarding the California Energy Efficiency Coordinating Committee ("CAEECC") Energy Efficiency Portfolio Filing Processes Working Group Report ("Working Group Report"). The Council was enthused to see the vast majority of parties express their support for the Working Group Report, and encourages the Commission to validate this broad consensus by approving this objective-focused reform proposal of the current Rolling Portfolio filing cycle approach. The Council wishes to use these Reply Comments as an opportunity to voice its support for several of the proposals made in party comments, as well as to express concern for the Public Advocates Office ("PAO") proposal to refund energy efficiency ("EE") funds to ratepayers – particularly during the current COVID-19 health and economic crisis. Ultimately, The Council's objective is to ensure that the state is able to achieve its SB 350 energy savings and carbon reduction goals.

III. THE COUNCIL WISHES TO HIGHLIGHT THE BROAD AGREEMENT ACROSS PARTIES ON THE WORKING GROUP PROPOSAL

The Council was very pleased to see broad agreement across the parties that submitted Opening Comments in support of the Working Group Proposal. This consensus clearly illustrates the significant difficulties a wide range of parties, including program administrators ("PAs"), environmental advocates, PAO, etc. face as a result of the unintended consequences that have resulted from five years of implementing the Rolling Portfolio cycle process. The Council urges the Commission to take note of this broad consensus, a rare occurrence in response to a Commission Ruling, and move to rapidly adopt the proposal in its entirety.

IV. THE COUNCIL AGREES WITH NRDC'S RECOMMENDATIONS FOR TECHNICAL INPUTS

In its Opening Comments, The Council recommended technical inputs be updated biennially as proposed in the Working Group Report. The Council requests that the Commission utilize the approach to all technical inputs, including the Database for Energy Efficiency Resources ("DEER") and evaluation, measurement, and verification ("EM&V"). outlined in NRDC's comments.[1] In particular, The Council wishes to emphasize NRDC's position regarding the cadence of updates to the Avoided Cost Calculator ("ACC"):

> "We do not see an inherent conflict with using the ACC for two years as long as the modifications are in fact minor, but do see potential impacts on the effectiveness of the efficiency program planning process if these values continue to be updated annually. <u>The Commission needs to balance increased precision attained by applying the latest avoided cost calculator with stability and predictability for the PAs and implementers</u>. [emphasis added]"[2]

Similarly, The Council endorses NRDC's approach to determining whether an avoided cost update is material:

> "To determine whether an avoided cost update results in material changes, the Commission should re-evaluate the aggregate cost-effectiveness of all the measures and their quantities that inform program goals as determined by the Program Goals

[1] NRDC Opening Comments, at pp. 16-19.
[2] *Id*., at pp. 16-17.

> and Targets study (PGT). If the aggregate cost-effectiveness of the total measure mix that comprise the program goals developed by the PGT varies by more than plus or minus 10 percent when modeled with updated avoided costs then the changes in the avoided costs should be considered material and the CPUC should proceed as recommended by Section 6.2 of the CAEECC Proposal."[3]

In addition to The Council's Opening Comments and our endorsement of both NRDC's and the Working Group Report's approach to technical inputs, the Council strongly urges the Commission to incorporate workpapers into this process. Ensuring that workpaper values are frozen along the same lines as DEER and EM&V values ensures that PAs and third-party administrators ("3Ps") are able to leverage all technical inputs –including workpaper-based measures– to accurately and appropriately forecast and plan programmatic activities. Further, PAs and implementers should be given appropriate notice of changes to values and receive adequate time prior to implementation of new values. It is critical that, in updating the portfolio filing cycle process, the Commission create a predictable regulatory environment conducive to effective planning and market stability.

V. THE COUNCIL EXPRESSES CONCERN OVER PAO'S DESIRE TO REFUND PROGRAMMATIC FUNDS FROM UNDERPERFORMING PROGRAMS

PAO's Opening Comments state:

> "...the Tier 2 advice letter process does not include a mechanism designed to deter a PA from submitting a budget for portfolio activities that is not credible, resulting in persistent underperformance. This kind of behavior should be deterred by the addition of refunds or other penalties and/or dismissal as a PA for specific programs, sectors, or the entire portfolio."[4]

While The Council appreciates PAO's desire to provide consequences for underperforming programs, we worry that refunding programmatic funds from such programs is counterproductive to the goals of energy efficiency. Excessively aggressive and punitive mechanisms will stifle portfolio performance most likely because the mechanisms to achieve refunds will be passed on to implementers (under new pay-for-performance contracting mechanisms), who would in turn have to pass more risk to customers – in an environment where performance risk is already extremely high. In cases where underperformance is due to regulatory risk (e.g. a workpaper update mid-program), or a market event (e.g. COVID-19), such

[3] NRDC Opening Comments, at P. 17.
[4] PAO Opening Comments, at Pp. 5.

risk cannot be planned for or managed by implementers or utilities alike. Consequently, punitive mechanisms will have a dampening effect on a market already trying to adapt to significant programmatic, technical, and COVID-related challenges. In addition, increased risk aversion as a result of PAO's suggested approach would stifle innovation and further advancement of energy efficiency, limiting California's ability to achieve future cost-effective portfolios. To achieve the intent suggested by PAO, we alternatively support reward mechanisms that align stakeholder interests and reward the persistent achievement of cost-effective resource savings.

In the interest of motivating responsible portfolio planning, goal achievement, and cost-effectiveness, we believe this challenge is more appropriately addressed through an enhancement to the Efficiency Savings and Performance Incentive ("ESPI") mechanism, which does not currently take cost-effectiveness into account. Specifically, we believe the time has come to implement a program administrator cost-effectiveness multiplier that proportionally adjusts (up or down) the resource savings portion of the ESPI. As was contemplated in D.13-09-023 as Conclusion of Law 10, a cost-effectiveness multiplier should be considered for the ESPI in future iterations.[5] Eight years on from the ESPI Decision, with many learnings and undesirable outcomes (e.g. the detriment of cost-effectiveness in the quest for long Effective Useful Lifes ("EULs") and high Net-to-Gross values ("NTGs") that tend to be overly expensive) experienced along the way, we view PAO's comments as a long overdue call to completely overhaul the ESPI mechanism to incorporate changes that will drive the performance desired by all stakeholders in a meaningful way.[6]

Implementing the measures proposed by PAO will prevent implementers from taking on more risk in trying to make programs successful, and in doing so will shift undue risk to PAs, 3Ps, and shareholders. Rather than seeking punitive measures, it would be best if all EE stakeholders work collaboratively on collective solutions, such as the enhancement of the ESPI mentioned above, to leverage allocated funds to the benefit of ratepayers through the advancement of EE. All parties have their part in delivering on state goals: 3Ps should be accountable to deliver efficiency as per their contracts, PAs should be accountable for their

[5] D.13-09-023, Conclusion of Law 10.
[6] See, for example, CEDMC's "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")."

decisions regarding their portfolio mix and achieving (or exceeding) savings goals, and the CPUC should be accountable for their approvals of the PA portfolio applications.

As expressed in the Council's Opening Comments, programs must be given sufficient time to ramp up, mature, and demonstrate success before determining a program has underperformed. We urge the Commission to consider shifting funds within EE portfolios prior to discharging valuable collected, allocated funds to customers, as well as to reforming ESPI to incentivize cost-effective goal achievement. Particularly during and in the wake of the current COVID-19 health and economic crisis, the reduced bills and jobs created that EE funds drive represent a critical economic stimulus.

While The Council appreciates that the critical stimulus role these funds play may dissipate to some extent in future EE portfolio cycles (though it may be many cycles before the effects of the current crisis dissipate), we nonetheless stress the importance of retaining and utilizing the funds collected for their intended purpose. While The Council supports mechanisms that would give cost-effectiveness and savings requirements "teeth" to ensure that ratepayer funds are spent on thoughtfully designed and well-administered programs that deliver their promised benefits, we would prefer that allocated funds be transferred to other viable EE programs driving cost-effective savings or other valuable outcomes (e.g. workforce, education, & training programs), rather than simply providing refunds.

V. CONCLUSION

The Council appreciates the opportunity to offer these Reply Comments, and looks forward to the Commission leveraging party input to remedy the (unintended) issues plaguing the Rolling Portfolio filing cycle process.

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Respectfully submitted,

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