

**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)

**OPENING COMMENTS OF THE
CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL
ON ADMINISTRATIVE LAW JUDGE'S RULING SEEKING COMMENTS ON
IMPLEMENTATION OF ASSEMBLY BILL 841
(PROGRAMMATIC IMPLEMENTATION OF AB 841)**

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I. INTRODUCTION

The California Efficiency + Demand Management Council (“The Council”) appreciates this opportunity to submit these Opening Comments on the Administrative Law Judge’s Ruling Seeking Comments on Implementation of Assembly Bill 841 (“ALJ Ruling”), issued in R.13-11-005 on October 7, 2020. These Opening Comments are timely filed and served pursuant to the CPUC’s Rules of Practice and Procedure and the instructions accompanying the ALJ Ruling.

II. OVERVIEW

The ALJ Ruling seeks comments on implementation of Assembly Bill (AB) 841, specifically as to (1) Budget Development and Administration and (2) Programmatic Implementation of AB 841.¹ These Opening Comments pertain only to the questions regarding Programmatic Implementation of AB 841, focusing on the School Energy Efficiency Stimulus Program (“SEESP”), including the School Reopening Ventilation and Energy Efficiency Verification and Repair Program (“SRVEVR”) and School Noncompliant Plumbing Fixture and Appliance Program (“SNPFA”).

The Council understands AB 841 as clearly intending not to create an additional regulatory layer for the full deployment of stimulative energy efficiency funds. However, based on the questions in the ALJ Ruling, it appears that the CPUC envisions a role for itself

¹ ALJ Ruling, at pp. 1 and 9.

that is aligned with neither the letter nor the intent of the law, and would result in a more complicated (and therefore expensive and inefficient) implementation of the law. With all due respect, The Council wishes to remind the CPUC that the funds authorized through AB 841 are stimulative, and as such the disbursement of these important funds needs to be streamlined as much as possible in order to achieve their intended goal. Further, it is the Council's understanding of the law that the CPUC must defer to the CEC with regard to all AB 841 implementation issues.

III. THE COUNCIL'S RESPONSES TO BUDGET DEVELOPMENT AND ADMINISTRATION QUESTIONS IN THE ALJ RULING

1. What should the CPUC take into consideration when calculating how the School Energy Efficiency Stimulus Program shall be considered a third-party program for compliance with D.16-08-019 (Section 1613)?

AB 841 clearly designates both the School Reopening Ventilation and Energy Efficiency Verification and Repair Program ("SRVEVR") and School Noncompliant Plumbing Fixture and Appliance Program ("SNPFA") to be designed, implemented, and delivered by the California Energy Commission ("Energy Commission"), and not by the Investor-Owned Utilities ("IOUs") or the California Public Utilities Commission ("CPUC").

AB 841 states that the programs "...shall be considered a third-party program for compliance with the commission Decision 16-08-019",² and D.16-08-019 states that in order to be considered third-party, "...the program must be proposed, designed, implemented, and delivered by non-utility personnel under contract to a utility program administrator."³ The law further states that the "Commission shall require each utility to fund the School Energy Efficiency Stimulus Program",⁴ and that "School Energy Efficiency Stimulus Program shall be a joint program among all the participating utilities that shall be consistent across the utility territories and shall be designed, administered, and implemented by the Energy Commission."⁵ Based on the direct language in AB 841, the Council understands the intent of the legislature is to ensure that the Commission require the IOUs to fund the SRVEVR and SNPFA programs, and leave all program design, implementation, and delivery of the program to the Energy

² AB 841, Section 1613.

³ D.16-08-019, Ordering Paragraph 10., at p. 111.

⁴ AB 841, Section 1615. (a) (1).

⁵ AB 841, Section 1610.

Commission. This is validated in the Rural Hard to Reach (“RHTR”) Reply Comments to the budget development and administration of AB 841 questions, stating that the CPUC’s “...oversight role should be limited to ensuring the transfer of program dollars from the IOUs to the California Energy Commission is effective and is consistent with law.”⁶ The Council agrees with the RHTR and concludes that the intention of Section 1613 is meant to ensure that “The CEC must be given unencumbered ability to oversee and deploy these dollars.”⁷

In parallel to The Council’s Opening Comments regarding AB 841 funding, we urge the CPUC to calculate AB 841 implementation as incremental, separate, and additive to core EE portfolios and thus outside the 60% mandate for third-party programs. As the Public Advocates Office (“PAO”) stated in their Reply Comments on Funding Questions, “SEESP is distinct from the existing EE portfolio”, further adding that “...any costs, benefits, or budgets associated with SEESP should be tracked and reported separately from the existing EE portfolio.”⁸ San Diego Gas & Electric (“SDG&E”) notes SEESP is, “...intended to serve only a very specific submarket sector of the Public Sector with very specific measures.”⁹ Southern California Edison (“SCE”) recommends that SEESP budgets be tracked separately in the California Energy Data and Reporting System (“CEDARS”). The Council is in total agreement with PAO’s assessment of the unique nature of SEESP, including the assertion that budgets should be reported separately in CEDARS along the lines of non-IOU program administrators (“PAs”).

The precedent for calculating AB 841’s unique new SEESP program administered by the Energy Commission in this manner exists in the form of treating Regional Energy Network (“REN”) budgets, as defined in D.16-08-019 Conclusions of Law 3, 4, & 5:

3. REN programs offer the potential for unique and valuable program designs and should be allowed to continue to apply to the Commission as program administrators.

⁶ Rural Hard to Reach Working Group, Reply Comments on Funding Questions, page 4

⁷ Rural Hard to Reach Working Group, Reply Comments on Funding Questions, page 4

⁸ PAO Reply Comments on Funding Questions, page 3.

⁹ SDG&E Opening Comments on Funding Questions, page 2.

4. RENs should still be considered pilots and should not be guaranteed future funding for programs to begin in future years beyond the specific authorizations already granted by the Commission in D.12-11-015 and D.14-10-046.

5. REN proposals should be evaluated on the merits of their program proposals and should be evaluated against the three criteria articulated in D.12-11-015: activities that utilities cannot or do not intend to undertake; pilot activities where there is no current utility program offering, and where there is potential for scalability to a broader geographic reach, if successful; and pilot activities in hard to reach markets, whether or not there is a current utility program that may overlap.

The SEESP program created by AB 841 meets all the same criteria as these programs, by offering a unique and valuable program design, having a discrete funding period of 2021 – 2023, and being widespread, school-focused, COVID-19-responsive activities that are incremental to any that the IOUs have so far undertaken. The CPUC should therefore apply the guidance in the same Decision this question cites in calculating the additive nature of the SEESP program to existing third-party programs. Doing so will enable the CPUC to fund stimulative school EE programs as stipulated by AB 841, while also continuing to enable the deployment of a full and robust EE portfolio serving California’s beleaguered residents and businesses during this critical period.

2. How, if at all, should the CPUC track that moneys from each IOU for the School Energy Efficiency Stimulus Program are used for projects located in the service territory for that IOU from which the moneys are received (Section 1615(c))?

The Council does not believe that tracking moneys from each IOU to SEESP is the role of the CPUC, as AB 841 states that “The Energy Commission shall ensure that moneys from each utility for the School Energy Efficiency Stimulus Program are used for projects located in the service territory of that utility from which the moneys are received.”¹⁰

¹⁰ AB 841, Section 1615 (c)

3. **Expenditures from the School Energy Efficiency Stimulus Program shall be found to be cost-effective and shall not be considered by the Commission when calculating the overall cost-effectiveness of energy efficiency portfolios of electrical corporations or gas corporations (Section 1617).**
 - a. **Should the IOUs omit both the costs and the benefits (i.e., any energy savings) of the SRVEVR and SNPFA programs from their calculations of portfolio Total Resource Cost, or only the costs? If the IOUs should include energy savings, should they include all energy savings or only the portion attributable to energy efficiency interventions?**

The Council believes that neither the costs nor the benefits of SEESP should be included in cost-effectiveness analysis. AB 841 clearly states that:

Because the commission's current cost-effectiveness methodology does not fully take into account indirect and nonmonetary public benefits, that methodology shall not be applied to these projects. Expenditures on the School Energy Efficiency Stimulus Program shall be found to be cost-effective and shall not be considered by the commission when calculating the overall cost-effectiveness of energy efficiency portfolios of electrical corporations or gas corporations.¹¹

As such the CPUC should follow the law and not attempt to include the programs in their calculations of portfolio Total Resource Cost.

In responding to the question, "If the IOUs should include energy savings, should they include all energy savings or only the portion attributable to energy efficiency interventions?", the law clearly states that the CPUC's cost-effectiveness methodology should not be applied. The law states: "...energy savings attributed to a project funded by the School Energy Efficiency Stimulus Program shall be attributed to the utility that provided those funds when determining compliance with ... energy efficiency saving mandates".¹² Savings attribution should occur as required by the law, but the CPUC's cost-effectiveness methodology shall not be applied to these programs as also directed in the law. While outside the scope of the implementation of AB 841, the CPUC should make every effort to reform cost-effectiveness so the full benefits of current and future programs are captured as The Council has urged in numerous previous comments.¹³

¹¹ AB 841 Section 1617

¹² AB 841, Section 1618.

¹³ Note that the Council has provided the Commission specifics of what cost-effectiveness reforms would look like. Please refer to our Opening Comments for the IDER proceeding (R.14-10-003) dated 4/15/19

- b. What guidance does the CPUC need to provide to the utilities for reporting on the SRVEVR and SNPFA programs, regarding baseline, cost-effectiveness, and any other programmatic details?**

As stated throughout these comments, The Council’s understanding of the law delegates responsibilities for all programmatic activities –including reporting– to the Energy Commission.

- 4. Reducing emissions of greenhouse gases (GHG) and energy savings attributed to a project funded by the School Energy Efficiency Stimulus Program shall be attributed the IOU that provided those funds when determining compliance with applicable GHG or energy efficiency savings mandates (Section 1618).**

- a. To what degree should the CPUC endeavor to track and verify energy savings and GHG emissions reductions attributed to projects funded through the School Energy Efficiency Stimulus Program?**

The Council believes tracking and verifying SEESP energy savings and GHG emissions reductions is not the CPUC’s role. The law clearly states, “The Energy Commission, in collaboration with each utility, shall adopt guidelines and regulations for the SRVEVR Program and the SNPFA Program.”¹⁴ Therefore, the CPUC should accept energy savings and GHG emissions as reported by the Energy Commission.

- b. How should the CPUC develop the baseline for determining reductions in emissions of GHG and energy savings from the School Energy Efficiency Stimulus Program, as specified in AB 841?**

As stated in response to question 4.a, The Council does not believe it is the CPUC’s role to develop baselines. It should instead accept savings as reported by the Energy Commission.

- c. Many interventions under the School Energy Efficiency Stimulus Program may increase energy use, for instance to provide ventilation where there previously was little or no ventilation. Does the CPUC need to count these types of negative energy impacts as negative savings?**

The law clearly states that, “The baseline for determining reductions in emissions of greenhouse gases and energy savings from the SRVEVR Program shall be the energy demand

and the Potential & Goals Ruling (R.13-11-005) dated 5/22/20.

¹⁴ AB 841, Section 1614 (a).

and emissions of greenhouse gases that would have occurred if ventilation and filtration recommendations for reopening schools were met without the assessment, adjustment, maintenance, repairs, and efficiency upgrades funded pursuant to the program”.¹⁵ For this reason, the Legislature has clearly empowered the Energy Commission –and not the CPUC– with the domain to develop guidelines and regulations, as well as administration of these funds. The CPUC should acknowledge this clear legislative direction to claim all energy savings. This should encourage the CPUC to begin accepting the full energy savings impact of energy efficiency projects.

d. How should energy savings and GHG emissions reductions from the School Energy Efficiency Stimulus Program be considered in setting goals for the program administrators? How should the Energy Efficiency Potential Study, currently under development, consider these potential benefits?

Consistent with statements contained through these comments, The Council’s understanding of AB 841 is that the setting of goals for the PAs is within the implementation domain of the Energy Commission. Therefore, this question is not relevant or applicable to CPUC's area of responsibility as defined by the law.

e. If program year 2021 funding is provided as detailed in Table 1, are any adjustments or considerations regarding attribution of energy savings and GHG reductions warranted to account for the significant difference in the amounts to be transferred by each IOU, most notably SCG?

Similar to The Council’s response to the previous question, as well as others throughout these comments, no attribution adjustments should be made by the CPUC given that these programs are within the domain of the Energy Commission as defined in AB 841.

5. How should the CPUC determine whether an energy efficiency update is cost-effective, for purposes of the additional funding opportunity provided by Section 1621(c)(2)?

As illustrated in our response to previous questions posed in this Ruling, it is not clear to The Council whether the CPUC has correctly interpreted the language and substantive intent of AB 841. Section 1621 of the law clearly states that the Energy Commission shall develop and administer the program, not the CPUC. The CPUC has no role in determining cost-

¹⁵ AB 841, Section 1618.

effectiveness of individual energy efficiency upgrades or repairs for SEESP. The law went so far as to directly point out the shortcomings of the CPUC's cost-effectiveness methodology and explicitly state that it shall not be applied to these projects, noting:

...the commission's current cost-effectiveness methodology does not fully take into account indirect and nonmonetary public benefits, that methodology shall not be applied to these projects. Expenditures on the School Energy Efficiency Stimulus Program shall be found to be cost-effective and shall not be considered by the commission when calculating the overall cost-effectiveness of energy efficiency portfolios of electrical corporations or gas corporations.¹⁶

The CPUC should therefore accept that all expenditures on the program "...shall be found to be cost effective..." as prescribed by the law.

6. How, if at all, should the CPUC verify energy efficiency contingency funds dispensed pursuant to Section 1621(c)(4) are used appropriately or otherwise returned to the CEC?

The Council does not have a response at this time, but reserves the right to respond to proposals from other parties in our Reply Comments.

7. Which entity/entities (the IOUs, CEC, CPUC, or other) should serve in an oversight role to assess whether contractors are meeting the requirement of AB 841?

Again, as reiterated in previous responses to questions posed in this Ruling, The Council finds the language of AB 841 to be clear on both the CPUC's and the Energy Commission's oversight roles on this subject. The CPUC's role is to ensure (a chronically unacceptable level of) unspent funds are administered by the Energy Commission during the prescribed period.¹⁷ As stipulated by the law, the CPUC should ensure funds are allocated to the Energy Commission and should play no other role in the administration or oversight of these programs. Similarly, the Energy Commission's role is clearly defined, enabling that regulatory body to, "...adopt guidelines and regulations for the SRVEVR Program and the SNPFA Program."¹⁸ The law is clear that the authority for determining whether contractors meet the requirement of AB 841 lays with the Energy Commission.

¹⁶ AB 841, Section 1617.

¹⁷ AB 841, Section 1615.

¹⁸ AB 841, Section 1614.

IV. CONCLUSION

The Council appreciates the opportunity to offer our comments on the implementation of AB 841, and encourages the CPUC to follow the direction AB 841 as written.

Dated: October 30, 2020

Respectfully submitted,

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