BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Building Decarbonization	Rulemaking 19-01-011 (Filed January 13, 2019)

OPENING COMMENTS OF THE CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL ON ADMINISTRATIVE LAW JUDGE'S RULING SETTING PREHEARING CONFERENCE AND DIRECTING COMMENT ON ENERGY DIVISION PHASE II STAFF PROPOSAL

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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 Setting Prehearing Conference and Directing Comment on Energy Division Phase II Proposal which was issued on September 24, 2020 (September 24 Ruling) in Rulemaking ("R") 19-01-011 (Building Decarbonization). These Opening Comments are timely filed and served pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure and the instructions accompanying the September 24 Ruling.

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. SUMMARY

The September 24 Ruling invites parties to comment on the August 20, 2020 Draft Phase II Staff Proposal (Phase II Proposal); the September 15, 2020 Phase II Workshop (Phase II Workshop); and the specific questions set forth in Attachment A.[2] The Council appreciates the Commission providing guidance to the emergent questions on decarbonization. In our responses in Sections IV and V below, we strongly urge the Commission to avoid instituting rules on incentive layering that we believe will have significantly negative implications for decarbonization efforts as well as other resource and non-resource energy efficiency programs, and encourage the Commission to create a robust Wildfire and Natural Disaster Resiliency Rebuild ("WNDRR") program.

IV. THE COUNCIL'S RESPONSES TO QUESTIONS REGARDING THE INCENTIVE LAYERING PROPOSAL SET FORTH IN ATTACHMENT A TO THE SEPTEMBER 24 RULING

1. How should incentives from different programs to advance building decarbonization be layered?

Incentive layering is a reasonable and justified practice that can advance uptake and transformation of efficient and emission-reducing technologies in California. Basic economics suggest that reducing the cost of advancing building decarbonization will accelerate and increase uptake of decarbonization – goals that align with those of the state and its principle regulatory bodies. The Council approved of the summary to incentive layering that was highlighted by the investor-owned utilities ("IOUs") in the staff workshop based on feedback gained from New York's Layering Approach – albeit with some modifications.[3]

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[2] September 24 Ruling, at p. 1.
[3] CPUC Incentive Layering Workshop, Slides 106–107. June 30, 2020. Available at: https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Energy_-_Electricity_and_Natural_Gas/Energy_Programs/Incentive%20Layering%20Workshop_06302020_Final.pdf

Generally, The Council believes incentive layering should be governed by Principles available in public form to stakeholders, but that the response to Principles should be left open to the market to solve for the optimum balance of achieving rapid goals in decarbonization and protecting ratepayers and program participants from bad actors. To achieve this balance, incentive layering should accommodate four principles to guide the regulation and monitoring of layering:

1. Incentive layering should be allowed in all cases as long as the total value of layered incentives does not exceed the project cost.
2. Administrators and implementers of rebates must work to ensure that any party benefiting from financial incentives, including but not limited to, customers, contractors, distributors, and manufacturers, do not inflate the true value of decarbonization projects based on the maximum available combination of rebates.
3. The requirements and risks placed on any party taking advantage of incentives should not be so unduly burdensome that it precludes, reduces, or confuses that participant.
4. Anyone providing a rebate above a threshold value should be able to claim the full value of the savings of that project on the basis that the project may not have proceeded without each of the layered incentives. The Commission can do formal evaluation of the true impacts of each contributing incentive through ex-post impact evaluations – but should not attempt to dilute the value of any incentive until such evaluations have justified a different attribution model.

In our answers to the following questions we try to expand and justify why these principles are the right alternative to the Staff Proposal.

2. Should the Commission adopt specific guidelines for incentive layering for certain building decarbonization technologies such as heat pump appliances? If yes, what should be included in the incentive layering guidelines (i.e. principles, attribution formula(s), a list of eligible technologies, a list of eligible programs, etc.)?

The Council believes the Commission should apply the four principles above but should not attempt to define attribution, technologies, or eligible programs. The application of these principles should be placed as an opportunity for the market to solve and provide solutions that address each principle. This approach will serve to not limit the capacity of the market to solve

the only issue of layering – namely, to ensure that customers are not being cheated and that public funds are not being misspent. If the Commission attempts to adopt specific guidelines at a single fixed point in time of this Proceeding, it will most likely limit the ability of market actors to continue to accelerate decarbonization goals. This is particularly timely as very large third-party energy efficiency programs are currently in the process of solicitation and launch, all of which have been proposed independently of one another and in the absence of any layering guidelines. Attempting to introduce specific guidelines at this time will disrupt all of those current solicitations. Adopting the proposed attribution guidelines will eliminate any assumptions on savings, costs, and risks that were part of those program solicitations.

Technology, services, and programs to drive decarbonization are also accelerating at a rapid rate. California has been slow at reacting to the introduction of new technologies into its energy efficiency programs, and equally slow at responding to changes in market dynamics of emerging technologies. California already has an established process for introducing emerging technologies through IOU, Community Choice Aggregator ("CCA"), and Regional Energy Network ("REN") programs (resource, non-resource, and market-transformation), as well as through the California Technical Forum ("CalTF") and through the California Energy Commission's ("CEC") Electric Program Investment Charge ("EPIC") program.

Existing emerging technology introduction pathways, which have themselves been under review and evolution for the past several years, should continue to be the main pathway for introducing decarbonization technologies to allow agreed quantification of energy and greenhouse gas ("GHG") savings associated with different technologies. However, since the true impact of GHG savings is very much based on time, location, baseline, and the project-specific details of each participant, the Council has significant reservations about attempting to fix a qualifying technology list and make assumptions about its impact on emissions list at a specific point in this time of rapid change.

The Commission's proposal for "attribution" of savings is problematic and should be rejected and replaced. We highlight these problems in our scenario in Question 3.

3. **To what extent should the Commission apply incentive layering guidelines for building decarbonization adopted in this proceeding to other programs under Commission jurisdiction? If yes, how should the Commission approach or manage this?**

The principles for layering could easily apply to all programs. However, The Council's feedback on attribution and its impact are equally (or more) problematic in other programs where performance and compensation are tied to savings achieved. The Council is concerned that a decision on layering attribution in this Proceeding may lead to direction and Rulings regarding the Rolling Portfolio process in the energy efficiency proceeding that will significantly damage the already-fragile progress to establishing a new portfolio of energy efficiency resources (and possibly market transformation) programs.[4]

Any arbitrary justification to dilute the value of an individual program or incentive will result in an increasingly large dead-weight loss to all programs – with the net outcome that all programs will perform worse, deliver less savings, less cost-effectively, and consequently progress on decarbonization and energy efficiency will be slowed.

Consider the following mini-scenario which is intended to represent a small microcosm of a much larger set of the real programs that were highlighted in the Staff Workshop on June 30, 2020 and that are expected to be operating in the market when the Technology and Equipment for Clean Heating ("TECH") and Building Initiative for Low Emissions ("BUILD") programs launch in 2021:

- Company A competitively wins an EE solicitation from one IOU to deliver 10 GWh of savings from a downstream program that includes 2 GWh tied to water heating measures.
- Company B independently wins an EE solicitation from a different IOU to deliver 30 GWh of savings from a statewide midstream water heater program.
- Company C runs a local program targeting electrification of water heating for a CCA. The CCA has not elected to administer rate-payer funds and their program is not regulated by the Commission.
- Company D runs a regional program for an Air Quality Management District with goals tied to unit sales of certain low-Nitric Oxide ("NOX") emission water heaters. The program is not regulated by the Commission.

[4] R.13-11-005, Administrative Law Judge Ruling Seeking Comments Regarding Natural Resources Defense Council Motion, July 31, 2020.

- Company E runs the statewide TECH program with goals and performance metrics tied to GHG reduction (among others) for multiple measures including water heaters.

Now imagine a single project: a water heater replacement at a single site. The customer has options to replace a very inefficient old series of gas water heaters unit with a single more efficient gas unit or a Heat Pump Water Heater ("HPWH"). The customer is also adding an electric vehicle ("EV") charger and making other changes to their electrical system to accommodate a larger remodel. The gas replacement is cheaper (reduces emissions but is not decarbonizing). The HPWH and EV project requires a panel upgrade. Leaving aside the challenge of a customer or contractor navigating the rules and eligibility of five potential programs, there are numerous issues with the Staff Proposal for attribution:

- What is the project cost used to do attribution? How do any of the individual Companies providing incentives at different parts of the value chain know what the contractor or customer is choosing to layer? How do they ensure consistent advice about incentive layering makes it to the contractor and on to the customer? How are they meant to be responsible for the actions of other Companies?
- Company A, B, D, and E have compensation tied to the savings achieved in their programs. These programs were proposed competitively on the assumption of full savings values that the program would achieve (perhaps based on custom, deemed, or NMEC methodologies). In the Staff Proposal, all such assumptions might be irrelevant if the Commission chooses to dilute the savings across the programs – which might in turn render each program financially unviable.
- Company A, B, C, D, and E have different goals tied to energy reduction, peak demand reduction, GHG reduction, non-GHG reduction, and water savings; their compensation might be tied to aspects of savings that are not relevant from one program to another.
- The administrative burden to try and track this attribution will surely outweigh the benefit of what the attribution is seeking to regulate.
- Furthermore, imagine that Company C, D, E choose to modify incentives in the middle of the program contract to target specific customers (e.g. disadvantaged communities). The modification of those incentives, under the Commission proposal, result in a modified attribution of value which in turn disrupts the ability of each Company to track and justify its compensation structure.

- Finally, imagine a 6th program from Company F launches in the middle of a program cycle in addition to those from Companies A-E. This new program serves a REN and is subject to a lesser cost-effectiveness criterion than some of the existing programs. This may enable the Company to provide higher incentive levels in a way that would distort attribution of the set of now six programs – while all the other programs would be further diluted.

This scenario is a small, but real, example of what happens in program implementation in California and serves to justify why The Council does not believe attribution guidance should be set at this time nor should it be based on a formula-based attribution of project and incentive values - namely it is too complex, dynamic, and costly to regulate savings attribution ex-ante at this time.

Instead of trying to assign an attribution formula that will quickly be outdated and difficult to manage or enforce, the Council strongly urges the Commission to set a minimum threshold value above which incentives can be deemed to have materially contributed to the outcome of a project, and then to allow any program providing such an incentive to claim the full value of savings (be they energy, water, GHG reduction, or otherwise) from that project. This is the simplest viable approach that will not reduce progress to state decarbonization goals. The Council further suggests the minimum threshold value would apply equally across multiple end-use technologies (including but not limited to heating, ventilation, and air conditioning ("HVAC") systems, water heating systems, and induction cookers) and would be set in conjunction with stakeholders as a continuance of the current discussions on this Ruling. The Council would be happy to participate in stakeholder forums organized by the Commission to further explore this proposal.

4. **Should the incentive layering guidelines address incentives provided under programs outside of the Commission's jurisdiction? If yes, how should the Commission approach or manage this?**

The Council believes the Commission should offer its Principles for open acceptance, as all Commission Rulings and Decisions on this matter occur in public forums. The Principles outlined above should be shared openly, and the Commission should look to ingest the different responses and solutions of different jurisdictions, administrators, implementers, and program

participants and use these as the basis for improving the initial Staff Proposal at a later time in this Proceeding.

5. **Should this proceeding undertake further activities, such as formal testimony or workshops, to further develop and inform the incentive layering proposal? Should this proceeding jointly convene workshop(s) with any proceedings addressing programs that could be affected by incentive layering guidelines developed in this proceeding? Please explain.**

The Council believes that if the Commission is unable to provide a final Decision on incentive layering, it should continue to investigate the issue and should do so by considering the high risks identified above that would cause damage to the state's decarbonization goals – and should continue activities to further develop and inform the incentive layering proposal. The Commission should not issue Conclusions of Law or Ordering directives on incentive layering if it believes that these will do further harm to the ecosystem of emerging, new, and to-be-launched programs that will be heavily impacted by such directions at this time.

As always, The Council is happy to work with the Commission on any future workshops and to bring the voices of program implementers, contractors, and customers to bear on these workshops.

6. **To establish the most effective market signal and program evaluation structure, should Energy Efficiency programs always serve as the incentive "baseline" from which other adjust incentive amounts to, or should the incentive "baseline" be based on the program that can provide the greatest incentive value?**

No. There should be no arbitrary "baseline" set until the Commission has accepted the difficulty in identifying what the total cost of a project is, how individual incentives might contribute to that total project cost, and how any program should react to modulation of incentives during program implementation, including but not limited to the launch, shutdown, or expansion of any individual program.

By setting EE programs as a guide for other programs, the Commission overlooks that not all relevant incentive programs are under their jurisdiction and efficiency incentives (particularly in the way they are currently valued in California as deemed, custom, fixed-unit, or NMEC) are under constant redefinition by the Commission and responsive modulation by

program administrators and implementers, such that the value of individual savings is not constant, fixed, or stable.

7. **Should any incentive layering attribution formula included in incentive layering guidelines take into consideration incentives provided to support the installation of a technology as well as for the technology itself? Incentives to support the installation of a technology could include incentives for labor costs and/or workforce training.**

The Council does not believe the Commission should create any layering attribution formula. Again, the issue is whether individual incentives are eligible for specific projects, components of projects, specific customers, or specific combinations of incentives. As long as incentives are not duplicative in a way that inflates the cost of a project, all incentives should be allowed to count to the cost of a project including product, labor cost, and project enabling costs. Administrators and implementers should be able to justify how they are managing participants to avoid price inflation and bad-faith participation.

8. **Should any incentive layering attribution formula take into consideration measures necessary to install a technology, such as an electrical panel or 220v electrical circuit for heat pump water heaters? Should any incentive layering attribution formula take into consideration measures that enable additional performance, functionalities, such as a CTA-2045 universal communication module, which can enable load shifting and load shed for heat pump water heaters?**

Please refer to The Council's response question 7 above.

V. THE COUNCIL'S RESPONSES TO QUESTIONS REGARDING THE PROPOSED WNDRR PROGRAM SET FORTH IN ATTACHMENT A TO THE SEPTEMBER 24 RULING

1. **Should the Commission implement any programs dedicated specifically to support the construction of decarbonized buildings in communities affected by wildfires and other natural disasters? If yes, should the Commission adopt the Wildfire and Natural Disaster Resiliency Rebuild (WNDRR) program proposed in the Phase II Staff Proposal? What, if any, modifications should be made?**

The Council unequivocally supports programs dedicated to construction of decarbonized buildings in communities affected by wildfires and other natural disasters.

2. **Should ratepayers be eligible for WNDRR incentives regardless of where they rebuild as long as it is in the same natural gas investor-owned utility service territory? Should manufactured homes be eligible for the WNDRR program? If yes, how should greenhouse gas reductions for manufactured homes be modeled and calculated?**

Yes, The Council believes that ratepayers should be eligible for WNDRR incentives within the same gas IOU service territory. Given the recurring nature of California's wildfires, in both their annual cadence and the areas affected, ratepayers whose homes were destroyed may have significant reservations about rebuilding their homes at the same location. It is therefore reasonable to provide incentives for those ratepayers who elect to rebuild and/or relocate to areas they deem to be at a lower risk.

The Council supports the eligibility of manufactured homes for WNDRR. The Council suggests using code baseline for a new manufactured home as the baseline. Since the code has not been updated since approximately 1992, there could be considerable savings from transitioning those to lower energy users.[5]

3. **Should the WNDRR program value the avoided natural gas service extension allowances established under each of the natural gas investor-owned utilities tariff rules? If yes, how should the value be incorporated into the program? San Diego Gas and Electric and Pacific Gas and Electric Company allowances are established under Tariff Rule 15. Southern California Gas Company's allowances are established under Tariff Rule 20.**

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.

4. **Is the proposed equity incentive an effective way to help low income and disadvantaged community members rebuild post natural disaster? Should it be adjusted in any way to enhance its effectiveness?**

The Council strongly supports an equity incentive to help low-income and disadvantaged community members rebuild following the occurrence of a natural disaster. These groups are significantly less able to respond to the direct and indirect effects of wildfires and other disasters,

[5] Electronic Code of Federal Regulations, "Part 3280 — Manufactured Home Construction and Safety Standards"
https://www.ecfr.gov/cgi-bin/text-idx?SID=a2c5655a37054c584f7dd6a0ed240fb8&node=pt24.5.3280&rgn=div5

and the Commission should make every effort to provide a pathway for these vulnerable communities to recover from the new normal of annual wildfires.

5. **Are there any other ways in which the Commission can ensure that the WNDRR program benefits low income and disadvantaged community members?**

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.

6. **Is the kicker incentive for passive house certification reasonable, or should the Commission consider other kicker incentives that can provide both near- and long-term benefits?**

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. **Should the Commission consider a statewide third-party program implementer for the WNDRR program? If yes, should the contract be for the entire 10 years of the program?**

The Council strongly supports having a statewide third-party implementer for the WNDRR program. The Council believes that the contract should be for an extended duration (i.e. no less than 5 years), but The Council supports a 10-year contract in order to enable a third-party implementer to effectively ramp up, manage, and drive the success of the program.

8. **Is the Tier 2 Advice Letter process described in the proposal an appropriate and efficient manner of implementing the WNDRR program?**

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.

9. **Is $5 million in annual funding an appropriate level of funding for the WNDRR program? Should the Commission explore how additional emergency funds could be administered through WNDRR?**

The Council worries that the $5M per year budget is not sufficient to meet the large –and increasing– needs for post-wildfire reconstruction. Based on the incentive levels of $11,000 – $55,000 specified in the Phase II Proposal, this would equate to only 90 – 450 buildings per

year.[6] It is difficult to accurately forecast the number of homes that might require rebuilds in a given year; however, the LNU Complex fire of 2020 alone (one of several large conflagrations burning during late-August 2020) destroyed 1,491 structures, and damaged a further 232.[7] While it is unclear what percentage of these structures were residences, it would exhaust the total annual WNDRR funding amount if only 30% of the structures destroyed by this single fire incident were homes. Since fires are increasing in scale, number, and frequency due to climate change, the Commission must set a much higher WNDRR budget. While The Council declines to recommend a specific higher budget amount at this time, the Commission must appropriately appraise the significant economic, environmental, social, and humanitarian benefits that meeting the ever-growing needs of California's increasingly-beleaguered residents are facing due to wildfires.

In line with this recommendation, The Council believes that the Commission should explore how additional funds could be administered and disbursed in a timely manner relative to the occurrence of future wildfires.

10. Should this proceeding undertake further activities, such as formal testimony or workshops, to further develop and inform the WNDRR program?

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.

VI. THE COUNCIL'S RESPONSES TO QUESTIONS REGARDING THE PROPOSED RATE ADJUSTMENT FOR ELECTRIC WATER HEATING CUSTOMERS SET FORTH IN ATTACHMENT A TO THE SEPTEMBER 24 RULING

1. Should the Commission require electric Investor-Owned Utilities (IOUs) to provide a special baseline allowance for residential customers who install electric water heating equipment in order to facilitate the decarbonization of buildings?

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.

[6] Phase II Proposal, p. 36
[7] San Francisco Chronicle Fire Tracker, "LNU Lightning Complex". https://www.sfchronicle.com/projects/california-fire-map/2020-lnu-lightning-complex

2. **The Phase II Staff Proposal recommends disallowing propane users from receiving the all-electric baseline allowance on a prospective basis unless they otherwise qualify by having electric space heating equipment installed. Before adopting this recommendation, should the Commission consider additional information such as: whether new procedures would need to be implemented by the utilities; the administrative cost of the proposed change; and the estimated monetary impact this proposed change would have on (i) monthly bills of customers who are currently or would otherwise have enrolled in the all-electric rate; (ii) the change in the amount of the all-electric baseline taking into account the changes to the electric baseline pool of customers used to calculate the all-electric baseline; and (iii) total revenue collected from residential customers?**

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.

3. **The Phase II Staff Proposal recommends implementing an interim baseline adjustment through an Advice Letter process. Is the proposed interim baseline adjustment and implementation process consistent with the Commission's obligations to set just and reasonable rates? What information (such as potential cost shifts) should be considered when evaluating the interim proposal? What are the operational challenges with implementing the interim proposal? Should a different interim rate adjustment mechanism be considered? Could the potential impacts of an interim proposal be mitigated by an enrollment cap? If the Commission were to adopt the interim proposal as a pilot, what questions should the Commission study?**

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.

4. **The Phase II Staff Proposal recommends that each IOU file a proposal for an incremental rate adjustment for all customers who install electric water heating equipment in the IOU's next GRC or RDW. What information should be contained in the proposal? What data are necessary to evaluate the proposals?**

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.

5. **Should this proceeding undertake additional activities, such as formal testimony or workshops, to further develop and inform the rate adjustment proposal?**

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.

6. **Are there existing rate designs or other mechanisms for mitigating the bill impacts of switching to an electric heat pump water heater?**

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.

VII. CONCLUSION

The Council appreciates the opportunity to comment on the Staff Proposal. We look forward to participating in this proceeding going forward.

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Respectfully submitted,

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