BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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

REPLY 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 Reply 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 Reply 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. SUMMARY

The September 24 Ruling invited 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, and for this opportunity to reply to party Opening Comments. In our responses in Sections III and IV below, we respond to comments from Pacific Gas & Electric ("PG&E"), the Natural Resources Defense Council ("NRDC") and Sierra Club, the Public Advocates Office ("PAO"), East Bay Community Energy, MCE, and Sonoma Clean Power Authority ("Joint CCAs"), San Diego Gas & Electric ("SDG&E"), Sacramento Municipal Utility District ("SMUD"), Environmental Defense Fund ("EDF"), Vermont Energy Investment Corporation ("VEIC"), Association of Bay Area

Governments ("ABAG"), and Recurve Analytics, Inc. ("Recurve"), with a goal of creating robust incentive layering principles. Additionally, The Council expresses our disagreement with PG&E's opposition to a third-party Wildfire and Natural Disaster Resiliency Rebuild ("WNDRR") program implementer.

III. THE COUNCIL HIGHLIGHTS ALIGNMENT ACROSS MULTIPLE PARTIES RECOMMENDING A ROBUST SET OF INCENTIVE LAYERING PRINCIPLES ACROSS THIS, AND RELATED PROCEEDINGS

The Council appreciates the rich and thoughtful comments of all parties in this proceeding in relation to the questions on incentive layering. We believe there was broad consensus that the Commission develop a robust set of incentive layering principles that could apply across multiple proceedings, programs, and jurisdictions, and that such principles be made freely available for market participants to adhere, respond, and innovate to uphold those principles. We also appreciate the broad consensus that arbitrary formulaic approaches to attribution should not be issued at this time, nor that prescriptive, stringent guidelines on incentive layering be issued until the negative impacts of such guidelines are more fully understood. We fully agree that the question of incentive layering needs further work amongst the parties; this is best continued without hearings, but rather through ongoing workshops on the topic, or through existing working groups such as the California Energy Efficiency Coordinating Committee ("CAEECC").

Principal amongst our concerns for the Staff Proposal, and as was acknowledged in multiple party comments, is that precedence on incentive layering created in the decarbonization proceeding has huge implications for other proceedings where resource valuation is under discussion and which are in a period of intense transformation. Without a common, transparent method for valuing resources, all attempts at attribution will serve but one outcome: the dilution of the overall capacity and effectiveness of all current and to-be-launched programs from achieving goals including their ability to be cost-effective – a term that has yet to be properly defined in relation to decarbonization or electrification. Holding emergent decarbonization programs to the resource-centric approach in energy efficiency programs will limit the success of these programs or will potentially destroy them.

We would like to take the opportunity in these Reply Comments to reiterate that there are five core principles that must guide all parties in addressing, responding to, and innovating to solve and tackle incentive layering in ways that benefit and protect ratepayers. These principles – with clarifications– from our Opening Comments are:

1. Incentive layering should be allowed in all cases as long as the total value of layered incentives does not exceed the direct project cost. Direct project costs include products, labor, and enabling technology or services that result in decarbonization projects.
2. Administrators and implementers of rebate programs 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. Such work includes creating and maintaining records in service of program evaluation.
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 the participant.
4. Any party responsible for providing a rebate above a to-be-defined threshold value should be able to claim the full value of the benefits of that project on the basis that the project may not have proceeded without each of the layered incentives.
5. The Commission or other jurisdictional bodies can formally evaluate the true impacts of layered incentives through ex-post impact evaluations – but should not attempt to dilute the current value of any incentive until such evaluations have justified a different attribution model. Further, the results of those evaluations must be incorporated into new program designs and procedures over a timeframe that allows for sufficient stakeholder input and an ultimately a smooth transition.

IV. THE COUNCIL RESPONDS TO MULTIPLE PARTIES ON INCENTIVE LAYERING

The Council agrees with multiple parties (including PG&E, Joint CCAs, PAO, SDG&E, and EDF) that many programs are not under the Commission's jurisdiction and we reiterate that many programs within and outside that jurisdiction have different goals, metrics, program designs, and requirements. As such, assigning rigid guidelines at this time is a fruitless exercise. Additionally, PG&E, SCE, Recurve and others characterize this issue within the broader lack of a common-valuation structure for California and note that attempts to attribute value (benefit-cost) in absence of such a structure will harm the ability of all programs to function and be effective (including cost-effective). We further agree with multiple parties (including SCE, PG&E, TURN, and PAO) that incentive layering guidelines should be made as widely available as possible including to program beyond the Commission's jurisdiction.

The Council agrees with multiple parties (including NRDC and VEIC) who reinforced the role of the Technology and Equipment for Clean Heating ("TECH") implementer to be able to experiment with incentives in service of market transformation. However, we remind parties and the Commission that *all* programs affected by guidance in this proceeding should also be able to experiment with incentives, program designs, and processes in response to incentive layering. We believe a market-response approach to addressing Principles, not rules, is the best way to address the myriad concerns raised in party comments on incentive layering – and that these not all be left to the as-yet-undecided TECH implementer, and certainly not in a way that multiple other parties be required to follow direction and process set by the TECH implementer.

We agree with multiple parties who reinforced the position espoused in our own comments (including SDG&E, PAO, TURN, and EDF) that incentives are allowed to layer to a level that could drive fuel-substitution, while also managing dual concerns for customers that overlapping incentives do not inflate project costs, or attract bad-faith actors, and that layered incentives should leave some cost burden for participating customers or contractors.

The Council agrees, and appreciate the voice of the customer, with multiple parties (including BayREN, SDG&E, VEIC, Recurve, SDG&E) who reinforced our own comments that incentives be allowed to layer in a way that streamlines the customer experience and makes it transparent. We hazard that attempts to create attributions of project value, not least for our own concerns on the definition of cost and benefit, are a literal nightmare for customers, contractors,

and implementers, and create huge burdens on administrators tasked with enforcing attribution. Attribution is a concept best dealt with in program evaluation, not in regulatory experiments.

We agree with multiple parties (including Joint CCAs, ABAG, SDG&E, and SCE) that incentives be able to count to the full direct cost of decarbonization projects including enabling technologies and labor associated with those projects. By contrast, PAO clarified that incentives should not exceed the benefits of projects. Once again, we highlight this is a false dichotomy for reasons highlighted in our own Opening Comments: some programs are not held to cost-effectiveness standards, there is no current cost-effectiveness framework for decarbonization, the Total Resource Cost creates disincentives for electrification, and that the costs and benefits of projects are directly tied to different value and cost stacks. Adhering to stringent cost-effectiveness rules intended for resource acquisition-based EE programs, will damage the overall ability of complementary and layered incentives to achieve state goals for greenhouse gas reductions.

The Council agrees with several parties (including SMUD, Joint CCAs, VEIC, and Recurve) that EE programs should not be a baseline for other programs. Multiple partes highlighted the issues of confusing different value streams delivered by different programs and misaligned goals between some programs and some resource valuation methods. We strongly disagree with those parties who argued that EE programs should be baseline. SCE, PG&E, SDG&E, and The Utility Reform Network ("TURN") argued that EE programs should be the baseline because "…they have the most stringent rules and cost-effectiveness requirements."[1] These are precisely the reasons why the Council does not believe EE programs should be a baseline – especially when applied to broader non-resource acquisition-based goals such as market transformation or greenhouse-gas reductions.

We agree with multiple parties that the Commission should undertake further activities to continue this discussion, but these would best be served by working towards a common resource valuation method that includes the many benefits of energy, electrification, and decarbonization resources. In the near-term, the Council suggests a workshop to establish the threshold level at which any contributing incentive should be allowed to claim the full benefits of a project to which that incentive assisted in its path to completion.

[1] SCE Opening Comments, p. 11

The Council disagrees with the Joint CCAs proposal that EE programs be a front-end for communicating and delivering to customers. Such a proposal is impractical for upstream and midstream programs including the TECH program. Midstream and upstream programs rarely interface directly with contractors, let alone customers, and holding manufacturers or distributors accountable for end-use installation has proven to be a significant barrier for program implementation. Furthermore, we supplement our disagreement by advocating that the Commission provide no direction for the TECH program before an implementer and their respective program design has been selected and that they consider that substantial guidance applied now would have major impacts to the fairness of the current RFP solicitation for companies who had chosen program design models in an absence of incentive layering rules. This point is also made by NRDC who states, "…we encourage the Commission not to be preemptively prescriptive with direction to the TECH administrator."[2] The Commission and the Joint CCAs should understand that many existing and to-be-launched programs have absolutely no desire or incentive to delegate responsibility for communicating to customers or contractors, particularly if this requires delegating program responsibility to a third-party that may be in competition with their own contractual requirements and compensation frameworks.

The Council strongly disagrees with SMUD's proposal that the CPUC create a clearing house for retroactive incentives – this would be a wholly impractical approach and a burden on the Commission with no precedence in other states of which The Council is aware as to its viability.

We disagree with several parties (including Joint CCAs and SDG&E) that Memorandums of Understanding ("MOUs") be the method by which programs collaborate on incentive alignment and layering. MOUs are an ineffective means of achieving collaboration as they contain no incentive or penalty for adherence. The Joint CCAs suggested that implementers share key information among other implementers, without understanding that doing so may unfavorably damage some program implementers' program performance, including their ensuing compensation or viability to deliver their programs. Additionally with so many overlapping programs running under different jurisdictional, administrative, and third-party actors, expecting all such parties to enact, comply, and adhere to multiple MOUs would be far less effective than

[2] NRDC Opening Comments, p. 3

The Council's proposal to lay out Principles and ask each party to respond to how they will adhere to them.

We disagree with several parties (including BayREN and SDG&E) who suggested creation of databases to assist attribution, or for the purpose of making available incentives accessible. Such tools exist and have existed in the past (for example the now defunct Database of State Incentives for Renewables & Efficiency database), and third-party companies have attempted to build such tools. Databases of incentives are outdated and rarely current with program status, requirements, or incentive levels, and often fail to communicate the specific requirements of individual programs. As such they are not useful, and funds should not be expended creating a new tool that will likely be of minimal value. Additionally, most programs already include databases for tracking projects and per our recommended Principles; implementers and administrators should be tasked with the responsibility for ensuring program tools enable attribution of savings through evaluation – not through a front-loaded formulaic method.

Finally, The Council appreciates CSE's suggestion for a cross-cutting working group for jurisdictional and non-jurisdictional representatives. California has a rich history of creating such working groups (for example the CAEECC) and sub-groups. The Council humbly suggests that, rather than create a new working group, the topic of incentive layering could itself be layered into the responsibilities of the CAEECC so that it can continue to be discussed in an existing productive forum.

V. THE COUNCIL DISAGREES WITH PG&E'S OPPOSITION TO A THIRD-PARTY WNDRR IMPLEMENTER

As stated in our Opening Comments, The Council strongly supports having a statewide third-party implementer for the WNDRR program. PG&E contends that, "…the single Statewide implementer model adds considerable complexity to contract negotiations, as well as program administration and implementation."[3] The Council disagrees that such a model adds considerable complexity; while the details are complex (as with any contract negotiation process), it is essential to have a single statewide administrator in place to avoid duplicative and inefficient WNDRR implementation across multiple Investor-Owned Utility ("IOU") service territories.

[3] R.19-01-011 PG&E Opening Comments on Phase II Staff Proposal, p. 13.

The contract negotiations issues to which PG&E refers, assumedly in reference to the ongoing third-party EE solicitation issues, are not the fault of third-party implementers and do not reflect the ability of third-party implementers to effectively deliver programs. The Market Transformation Administrator model, currently in the early stages of development, provides a framework for statewide implementation of these types of programs that can enable success of broad-based initiatives.

The Council believes that, in contrast to the current convoluted EE third-party solicitation process administered by the Commission and the IOUs, statewide third-party implementers are better suited to addressing the, "Issues around customer experience, customer data access, and support services will need to be resolved as these Statewide programs are launched and tested in the field." In contrast to the multifaceted and distributed nature of multiple parallel EE solicitations, the WNDRR program can capitalize on the advantages of the third-party implementation to drive immediate relief for California's beleaguered ratepayers.

IV. CONCLUSION

The Council appreciates the opportunity to submit these Reply Comments, and looks forward to future engagement in this proceeding.

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Respectfully submitted,

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