

**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 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 Reply 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 Reply Comments are timely filed and served pursuant to the Commission’s Rules of Practice and Procedure and the instructions accompanying the ALJ Ruling.

In these Reply Comments, The Council highlights how we take issue with Southern California Edison’s (“SCE’s”) position that the implementation of Assembly Bill (“AB”) 841 needs to be considered a third-party (“3P”) program by the California Energy Commission (“CEC”) and thus should count towards the Investor-Owned Utilities’ (“IOUs”) 60% minimum mandate for 3P-delivered programs stipulated by the California Public Utilities Commission (“CPUC”) in Decision (“D.”) 16-08-019. The Council supports an opposite viewpoint that is highlighted in Opening Comments from the Public Advocates Office (“PAO”) and The Utility Reform Network (“TURN”). Both illustrate that AB 841 funds should not count towards the 60% 3P mandate.

**II. THE COUNCIL AGREES WITH PAO & TURN THAT THE DEFINITION OF
AB 841 IMPLEMENTATION AS A THIRD-PARTY PROGRAM SHOULD NOT
COUNT TOWARDS THE 60% THIRD-PARTY MANDATE**

The Council takes issue with SCE’s assertion that, “...the Commission should consider all funds allocated by each IOU to the CEC for Stimulus Program funding as counting toward

the third-party program requirement for the purposes of compliance with D.16-08-019 and D.18-01-004.”¹ Counting AB 841 funds in this manner would, as SCE themselves note, “...cannibalize a portion of the utilities’ or new third-parties’ programs...”. The intent of the 60% 3P mandate defined in D.16-08-019 is to create a full and vibrant EE marketplace; implementing AB 841 as interpreted by SCE would explicitly undermine this Decision.

PAO and TURN correctly note that, while the language of AB 841 defines the School Energy Efficiency Stimulus Program (“SEESP”) as a 3P program, it is an incremental and additive program and as such should not count towards the 60% mandate required by the CPUC. PAO accurately captures the issues with counting AB 841 towards the 3P mandate:

The passage of AB 841 does not change the Commission’s rationale for establishing its third-party solicitation goals. The investor-owned utilities’ (IOUs) ongoing third-party procurement processes should continue as planned. AB 841 requires that ratepayers fund SEESP for program years 2021, 2022, and 2023. The IOUs should meet their third-party goals for the non-SEESP portion of the EE portfolios that the IOUs administer. This also will ensure that the IOU EE portfolios will not abruptly fall out of compliance with Commission directives when SEESP sunsets. Typically, third-party procurement processes take 1-2 years from inception to contract execution. This 1-2 year timeframe makes it impractical for IOUs to reverse course on third-party procurement in their existing EE portfolio for a new, three-year program.²

TURN similarly highlights the issues caused by incorporating the implementation of AB 841 into the existing 60% 3P mandate in its Opening Comments:

TURN recommends that the Commission treat the School Energy Efficiency Stimulus Program (SEESP) as a third-party program in a manner that does not impact the third-party (3P) program minimum budget allocation requirements adopted in D.16-08-019 and D.18-01-004. Otherwise, the Commission will significantly dilute the meaning of those requirements, potentially preventing realization of some of the benefits intended by the Commission in D.16-08-019.³

The Council is in complete agreement with PAO’s statement that, “Stopping or reversing third party procurement would have the negative consequence of creating market uncertainty for implementers engaged in the procurement process.”⁴ Moreover, it is essential that the Commission heed the legislature’s intent and the letter of the law in utilizing

¹ SCE Opening Comments on AB 841 Implementation, at p. 2.

² PAO Opening Comments on AB 841 Implementation, at p. 2.

³ TURN Opening Comments on AB 841 Implementation, at pp. 1–2.

⁴ TURN Opening Comments on AB 841 Implementation, at p. 2.

“...unspent and uncommitted energy efficiency funds...” by treating the implementation of AB 841 appropriately as an incremental, additive program that does not impact existing 3P programs already in the process of delivering a robust EE marketplace.⁵ Failure to do so will, as pointed out by SCE, “...likely cannibalize a portion of the utilities’ or new third-parties’ programs being offered to the school segment thereby reducing the achievable potential for IOUs.”⁶ As presented in The Council’s Opening Comments,⁷ the intention of AB 841 consideration of the SEESP as a third-party program is to ensure that the program is “...proposed, designed, implemented, and delivered by non-utility personnel under contract to a utility program administrator.”⁸

AB 841’s intent is to provide stimulative EE activities over and above the IOUs existing portfolios to serve a particular need during the COVID-19 pandemic; interpreting both California law and prior Commission Decisions in such a way as to lower the aggregate amount of EE activity is neither appropriate policy making nor in the best interests of California’s beleaguered citizens.

III. CONCLUSION

The Council appreciates the opportunity to offer these Reply Comments on the Programmatic Implementation of AB 841 of the ALJ Ruling.

Dated: November 6, 2020

Respectfully submitted,

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⁵ AB 841, Section 1615 (a)(1)(B)

⁶ SCE Opening Comments on AB 841 Implementation, at p. 7.

⁷ CEDMC Opening Comments on AB 841 Implementation, at p. 2.

⁸ D.16-08-019, Ordering Paragraph 10., at p. 111.