BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Advance Demand Flexibility Through Electric Rates.	Rulemaking 22-07-005 (Filed July 14, 2022)

**OPENING COMMENTS OF
THE CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL ON
ADMINISTRATIVE LAW JUDGE'S RULING ON THE IMPLEMENTATION
PATHWAY FOR INCOME-GRADUATED FIXED CHARGES**

Dated: July 31, 2023

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I. INTRODUCTION

The California Efficiency + Demand Management Council ("the Council") respectfully submits these Opening Comments on the Administrative Law Jude's Ruling on the Implementation Pathway for Income-Graduated Fixed Charges, issued in this proceeding on June 19, 2023 ("ALJ Ruling"). These Opening Comments are timely filed and served pursuant to the Commission's Rules of Practice and Procedure, the ALJ Ruling, and the ALJ Ruling, dated July 18, 2023 which extended the due date of Opening Comments to July 31, 2023 and Reply Comments to August 21, 2023.

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 distributed energy resources ("DER") service providers, implementation and evaluation experts, energy service companies, engineering and architecture firms, contractors, financing experts, workforce training entities, and energy efficient product manufacturers. The Council's mission is to support appropriate EE, DR, and DER policies, programs, and technologies to create sustainable jobs, long-term economic growth, stable and reasonably priced energy infrastructure, and environmental improvement.

[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.

III. THE COUNCIL RESPONSES TO ALJ RULING QUESTIONS

1. Section 739.9(d)(2) requires any approved fixed charges to "[n]ot unreasonably impair incentives for conservation, energy efficiency, and beneficial electrification and greenhouse gas emissions reduction."

The Council acknowledges the statement above cites statutory language. Regardless, Sec. 739.9(d)(2) establishes an apparent willingness to impair incentives for conservation, energy efficiency, and beneficial electrification and greenhouse gas emissions reduction so long as they are not deemed "unreasonable." This provision poses a clear challenge to a myriad of the state's key energy policies, including Senate Bill ("SB") 350's (De Leon, 2015) requirement to double energy efficiency savings by 2030[2] and the state's Loading Order which "mandates that energy efficiency and demand response be pursued first, followed by renewables and lastly clean-fossil generation."[3]

The Loading Order has framed decades of energy policy that has helped establish California as an energy leader across the nation.[4] Energy efficiency alone has saved Californians over $100 billion[5] in their utility bills and significantly reduced greenhouse gas emissions. The Council is concerned that the income graduated fixed charge, eventually implemented by the Commission, could result in impairments to conservation, energy efficiency, and beneficial electrification and greenhouse gas emissions reduction. The Council is highly concerned with any impairments to demand side resources regarding its impacts to the industry and workforce, towards energy affordability and reliability, and in achieving the state's ambitious goals to decarbonize the economy. Demand side resources, particularly energy efficiency and demand management, are foundational solutions to progressing affordable, clean energy policies across the state.

The income graduated fixed charge holds the potential to put at risk major investments just outlined by the Commission in D.23-06-055: $4.3 billion and $4.6 billion between 2023 and

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[2] SB 350 Sec. 2(a)(2).
[3] More information about the Loading Order can be found here: https://www.cpuc.ca.gov/irp/.
[4] ACEEE – "The State Energy Efficiency Scorecard" which can be found here: https://www.aceee.org/state-policy/scorecard#:~:text=Top%20finishers%20in%20this%20year's,of%20electricity%20nationwide%20in%202021.
[5] California Energy Commission – "Achieving Energy Efficiency" which can be found here: https://www.energy.ca.gov/sites/default/files/2019-06/EE-AchievingEnergyEfficiency.pdf

2031,[6] among many other energy policies and opportunities that depend upon cost-effectiveness considerations or price signals. That risk could hamstring the advancement of and investments in emerging technologies and innovative programs – placing at risk the state's ability to advance and meet its climate and clean energy requirements. The Council asks the Commission staff to clarify how they interpret the statutory term "unreasonably" in the context of Sec. 739.9(d)(2).

a. How should the Commission address this requirement for IGFCs in the context of state policy goals of encouraging strategic electrification and improved grid utilization?

The Council reiterates our concerns about the potential for the income graduated fixed charge to harm energy policies and programs that rely on cost-effectiveness considerations or price signals. Illustratively, Track B of this proceeding assesses opportunities to pursue and implement demand flexibility through electric rates, such as that imagined by the California Flexible Unified Signal for Energy ("CalFUSE").[7] Demand side resources are generally regulated and incentivized by cost-effectiveness considerations and price signals. Demand side resources present significant cost reductions and emissions avoidance benefits if utilized correctly, particularly from the perspective of mitigating against unnecessary and costly investments in infrastructure upgrades through improved grid utilization.[8] It is therefore reasonable to assume that impairments to demand side resources would result in reduced delivery of benefits of those resources, and therefore an unnecessary stifling of improved grid utilization.

[6] D.23-06-055 which is the Decision Authorizing Energy Efficiency Portfolios for 2024-2027 and Business Plans for 2024-2031, issued in A.22-05-005, et al. (Energy Efficiency Business Plans) on July 3, 2023.

[7] CPUC – "Advanced Strategies for Demand Flexibility Management and Customer DER Compensation (June 22, 2022) which can be found here:https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/demand-response/demand-response-workshops/advanced-der---demand-flexibility-management/ed-white-paper---advanced-strategies-for-demand-flexibility-management.pdf

[8] *See,* Stanford News – "Coordination could spare billions in grid upgrade cots and accelerate electrification" (July 14, 2023) which can be found here: https://news.stanford.edu/2023/07/14/advancing-electrification-grid-coordination/; CPUC – "Cover sheet by the California Public Utilities Commission, Energy Division – Electrification Impacts Study Part 1" (May 9, 2023) which can be found here: https://uploads-ssl.webflow.com/62a236e9692c48cff36898da/6462917ab8a790b6b85f5fbb_CPUC%20Kevala%20EIS%20Part%201.pdf; and IEA – "Keeping cool in a hotter world is using more energy, making efficiency more important than ever" (July 21, 2023) which can be found here: https://www.iea.org/commentaries/keeping-cool-in-a-hotter-world-is-using-more-energy-making-efficiency-more-important-than-ever

b. **How should the Commission incentivize beneficial electrification and greenhouse gas emissions reductions during off-peak periods while meeting general conservation and efficiency goals? For example, should IGFC reductions from volumetric rates be applied to reduce rates during off-peak periods while maintaining existing peak period rates at the current level to continue to incentivize conservation and energy efficiency during peak periods?**

The Council believes in the value of energy at the time and appropriate locational granularity of its use. The Council supports balancing meaningful differentiation in volumetric rates (in the context of variable rates or time of use rates, for example) with ensuring price signals do not become de facto punitive measures. The Council suggests balancing income graduated fixed charges with preserving price signal incentives.

2. **However, there are substantial concerns of the growing complexity for customers and potential for major costs for middle class. What happens to those folks (i.e. lower end is OK, high end can invest in technology that can engage, middle class may not).AB 205 does not specify how much an IGFC should reduce bills for low-income customers to comply with Section 739.9€(1).**

The Council urges the Commission to explicitly incorporate the high cost of living (including energy) in California relative to other states when considering cost impacts for the middle class as well as with all customers statewide.

a. **What policies or principles should the Commission consider when determining how much the first version of IGFCs should reduce bills for low-income customers?**

A beneficial product of the Council's July 13 joint motion for public participation hearings[9] ("PPH") filed in R.22-07-005 would be to solicit, and act upon input from various communities across the state. Were PPHs to be held, the Council hopes that, among many things, disadvantaged community members and low-income customers are granted the opportunity to inform key decision-makers of the various impacts of the income graduated fixed charge proposals under consideration and the general implementation challenges associated with the statutory requirement. The Commission should consider these perspectives in mind with the recently updated Electric Rate Design Principles[10], the Environmental and Social Justice Action

[9] Joint Motion for Public Participation Hearings, submitted in this proceeding on July 14, 2022.
[10] D.23-04-040 which is the Decision Adopting Electric Rate Design Principles and Demand Flexibility Design Principles, issued in this proceeding on May 3, 2023.

Plan,[11] and other critical policy mechanisms that address inequitable burdens on disadvantaged communities and low-income customers across the state.

b. Should the first version of IGFCs differentiate between low-income and very low-income customers?

The Council does not have a response to this question at this time.

c. What are the legal, policy, and/or operational justifications for your proposal?

The Council does not have a response to this question at this time. The Council did not submit a proposal to the Commission for its consideration.

3. Should the Commission adopt a definition of moderate-income customer for IGFC design purposes? If so:

The Council does not have a response to this question at this time.

a. Please provide the source of your proposed definition [citation omitted].

The Council does not have a response to this question at this time.

b. Should the first version of IGFCs be designed to impact the average monthly bill of moderate-income customers (in each baseline territory) in a particular way?

The Council does not have a response to this question at this time.

c. What are the legal, policy, and/or operational justifications for your proposal?

The Council does not have a response to this question at this time.

4. Do you recommend a cap on how much the first version of IGFCs may increase the average monthly bills of higher-income customers (in each baseline territory)? If so, what would be a reasonable amount? What are the legal and/or policy justifications for your proposal?

The Council does not have a response to this question at this time.

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[11] Environmental & Social Justice Action Plan which can be found here: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/news-office/key-issues/esj/esj-action-plan-v2jw.pdf

5. **What types of fixed costs should be eligible to be included in any given IGFC (Eligible Fixed Costs)? Please explain why specific types of costs should (or should not) be categorized as Eligible Fixed Costs based on legal or policy justifications.**

The Council does not have a response to this question at this time.

6. **Are there certain Eligible Fixed Costs that should be excluded from recovery through the first version of IGFCs? Would it be reasonable to simply recover a portion of Eligible Fixed Costs through the first version of IGFCs without specifying which costs are recovered?**

The Council reiterates the value of ensuring the income graduated fixed charge is structured under the recently updated Electric Rate Design Principles. The income graduated fixed charge statutory requirement holds the potential to result in a major overhaul of rates and how customers engage with their energy consumption and investments. The Commission must ensure each iteration of the income graduated fixed charge (assuming there may be more than one version) complies with statutory requirements while serving the state's ambitious policies, goals, and requirements.

The Council also strongly urges the Commission implement an income graduated fixed charge pilot (or pilots) in order to explore various fixed charge structures and identify potential challenges and opportunities with each pilot. A pilot pathway does not necessarily resolve the anticipated implementation challenges but will help ensure that whatever rate designs may roll out result in delivering benefits to all Californians and continue to advance the state towards its decarbonization goals (again, such as the doubling of EE delivered by 2030 required by the passage of SB 350).

7. **Section 739.9(d)(1) requires any approved fixed charges to "[r]easonably reflect an appropriate portion of the different costs of serving small and large customers." How should the Commission address this requirement? Please cite previous Commission decisions and operational issues with identifying small customers.**

The Council does not have a response to this question at this time.

   a. **Should the Commission include in the IGFCs a demand-differentiated charge similar to what has been authorized by the Hawaii Public Utilities Commission for future Hawaii TOU rates where certain customer-specific costs are collected on the basis of noncoincident peak demand [citation omitted]?**

The Council does not have a response to this question at this time.

b. **Several parties proposed to apply a different fixed charge to multi-family customers, either by identifying multi-family customers or using a shared service drop as a proxy for these customers. For utilities that do not already identify multi-family customers, what would be the additional cost of identifying multi-family customers? In the alternative, is a shared service drop a reasonable proxy for identifying multi-family customers?**

The Council does not have a response to this question at this time.

c. **Should the Commission include some other approach to differentiating the fixed charge based on customer size? This could include some other parameter or a combination of parameters to measure customer size. An example of this would be the approach used by Burbank Water and Power, which adds a residential "service size charge" to a fixed residential "customer service charge", with the "service size charge" differentiated based on customer size as follows: small defined as a service location with two or more meters per service drop (typically multifamily residential); medium defined as a service location with one meter per service drop and does not meet the definition of large (typically single-family residential); and large defined as a service location with a panel size greater than 200A [citation omitted].**

The Council echoes our previous recommendation for the Commission to implement an income graduated fixed charge pilot (or pilots) before rolling out statewide implementation. To a similar extent, the Council appreciates the Commission's creativity demonstrated in this question and urges the Commission to remain thoughtful and deliberate towards elevating energy affordability and decarbonization while exploring various solutions to such a challenging issue.

d. **If the IGFC is differentiated based on customer size or an individual customer's demand, are there customer-specific Eligible Fixed Costs or other factors that should be used to determine the magnitude of the size-based differentiation?**

The Council does not have a response to this question at this time.

8. **How should the Commission apply the Electric Rate Design Principles to the design of the first version of IGFCs?**

The Council supports applying all Electric Rate Design Principles to the design of all versions of the income graduated fixed charges. The Council highlights the need to ensure Electric Rate Design Principle iv. is seriously considered: "Rates should encourage economically efficient (i) use of energy, (ii) reduction of greenhouse gas emissions, **and** (iii) electrification"[12]

[12] D.23-04-040, at p. 2.

[emphasis added]. Though the Council remains troubled the term "conservation" was struck from the final, updated version of Electric Rate Design Principle iv., it is worth noting the Proposed Decision recognized the "continued importance of conserving energy during high cost and high-GHG emissions hours."[13]

If income graduated fixed charges result in impairment to energy efficiency and other demand side resources, the Council believes that fixed charge would directly contradict Electric Rate Design Principle iv. in the sense that the rate would disincentivize economically efficient use of energy and reduction of greenhouse gas emissions (with the potential to disincentivize or not incentivize electrification as well).

9. Should the Commission eliminate a minimum bill for residential customers when implementing the first version of IGFCs?

The Council does not have a response to this question at this time.

10. What proven income verification processes and best practices from existing low- and moderate-income assistance programs in California or other jurisdictions should be leveraged for the first version of IGFCs?

The Council again urges the Commission to implement an income graduated fixed charge pilot (or pilots) that may surface implementation challenges and other issues not yet considered in the proposals. The Council also urges the Commission to work towards meeting its statutory deadline of July 2024 in a way that enables the establishment and proper execution of pilots and empowers the Commission to revise and improve the first income graduated fixed charges in response to the lessons learned from those pilots (assuming there is more than one).

a. Should the Commission borrow elements of income-verification processes from low- or moderate-income programs administered by other California state agencies or other jurisdictions for the first version of IGFCs? If so, please describe the state program, income eligibility requirements, and income verification process.

The Council is concerned about the anticipated implementation complexities of collecting and verifying customer income data. The Council suggests a resolution to some of those complexities is to leverage existing and relevant program mechanisms.

[13] Proposed Decision Adopting Electric Rate Design Principles and Demand Flexibility Design Principles, mailed in this proceeding on March 17, 2023.

b. **Should the Commission establish categorical eligibility for income verification based on low- and moderate income programs administered by other California agencies or federal agencies? (For example, the income eligibility of around 96 percent of California LifeLine participants is verified through proof of participation in a low-income assistance program administered by another California agency.)**

The Council does not have a response to this question at this time.

c. **If the Commission establishes categorical eligibility, what list of programs should the Commission approve for categorical eligibility for (a) a low-income customer tier, or (b) a moderate-income customer tier? Please either provide a list of programs or refer to the categorical eligibility rules of low- or moderate-income programs.**

The Council does not have a response to this question at this time.

d. **Should the Commission authorize the use of data sharing agreements with other California agencies to verify participation in low- or moderate-income programs?**

The Council does not have a response to this question at this time.

e. **To the extent that you propose a new income verification process for the first version of IGFCs that has not been implemented by a California state agency, has your proposed approach been implemented or tested by another state or local jurisdiction? If so, please provide information about where your proposed approach has been implemented or tested, including any available evaluation reports. If not, please explain why existing income verification processes are not sufficient for the first version of IGFCs.**

The Council does not have a response to this question at this time.

11. **Should the Commission adopt a different design for the first version of IGFCs for certain non-default rates, such as electrification rates (e.g., PG&E's E-ELEC rate, SCE's TOUD-PRIME rate, and SDG&E's TOU-ELEC rate)? If the first version of IGFCs are the same for all rates, will this approach impact the ability of electrification rates to incentivize electrification compared with default rates?**

The Council does not have a response to this question at this time.

12. Should the Commission authorize utilities to conduct a request for proposals to hire a third-party administrator (selected by Energy Division staff) for income verification for the first version of IGFCs for all of the IOUs, including or excluding the small and multi-jurisdictional utilities (SMJUs)? If so, when should the third-party administrator be hired? Should the Commission direct the selected third-party administrator to conduct any tests, participate in working groups, or do other work prior to the implementation of the first version of IGFCs?

The Council does not have a response to this question at this time.

13. How should the income-verification processes for the first version of IGFCs be designed to reduce administrative costs and implementation problems?

The Council does not have a response to this question at this time.

a. If the Commission establishes a tier for moderate-income customers, how should the Commission verify incomes for these customers? Should income verification (and reverification) for moderate-income customers be similar to the process for CARE/FERA customers, California LifeLine, or another state program?

The Council does not have a response to this question at this time.

b. Several parties argued that defaulting all non-CARE/FERA customers to the highest tier would result in placing a large portion of customers in the wrong tier. Other parties argued that defaulting customers to a lower tier would also result in placing a large portion of customers in the wrong tier and would not motivate higher income customers to consent to income verification. What solutions could mitigate the harms associated with defaulting all non-CARE/FERA customers the highest tier? For example, should non-CARE/FERA customers be defaulted to the highest income tier at least several months before a fixed charge is applied to their bill so that they have an opportunity to appeal their assignment? Should IGFC customer education start at least six months prior to implementation of the first version of IGFCs?

The Council suggests the Commission explore potential challenges with the scenario stated above before attempting to identify explicit solutions. The Council can imagine a series of unintended consequences that, if occurred at scale, could result in greater cost challenges for lower- and middle-income Californians. Those unintended consequences include the potential for:

1) Unintended incentives for ratepayers to “game the system” regarding providing their income data. The Council is concerned that electricity customers may be perversely incentivized to reduce their fixed charge based on the income data they report. The

highest income earners may be more incentivized to “game the system” because they generally face higher fixed charges.

2) Uncertainty or unclear pathways regarding homes that are held in trusts or are rented as vacation properties.

3) The potential for incremental increase in the number of higher income Californians defecting from the grid to avoid (among many things) delivering highly sensitive income information to utilities as well as paying income graduated fixed charges.

14. How should the costs of income verification be recovered for the first version of IGFCs? To the extent that income verification overlaps with CARE and FERA eligibility, how should the Commission identify which income verification costs are additional to CARE/FERA and should be considered IGFC costs?

The Council does not have a response to this question at this time.

15. Should the Commission establish one or more working groups and/or authorize funding for contractors for the following purposes?

The Council does not have a response to this question at this time.

a. Should a working group develop reporting requirements and an evaluation plan for the first version of IGFCs for consideration in this proceeding? Or should reporting requirements and evaluation plans be developed in each utility’s rate design window application proceeding?

The Council does not have a response to this question at this time.

b. Should the Commission establish a working group and authorize funding for a third-party contractor to develop an ME&O proposal for consideration in this proceeding? If so, what should be the scope of work for the working group and contractor? When should the proposal be due?

The Council does not have a response to this question at this time.

c. Should the Commission establish a working group and authorize funding for a third-party contractor to develop income verification proposals for future versions of IGFCs? If so, what should be the scope of work for the working group and/or contractor (e.g. identify and propose to test new methods for verifying incomes of higher-income customers and streamlined approaches for verifying low incomes)? When should the proposal be due?

The Council does not have a response to this question at this time.

d. Should the Commission establish a working group to discuss IGFC implementation issues and recommend improvements?

The Council does not have a response to this question at this time.

e. **How much funding should be allocated for third-party contractors, and how should the costs be recovered?**

The Council does not have a response to this question at this time.

16. **When should the utilities file the rate design window applications for the first version of IGFCs (*i.e.* how many months after the upcoming Track A decision)?**

The Council does not have a response to this question at this time.

17. **When and how should the Commission consider data and reports from the first version of IGFCs and recommendations for improving the implementation of the first version of IGFCs?**

The Council does not have a response to this question at this time.

a. **What process(es) should the Commission establish to enable rapid resolutions of implementation problems?**

The Council does not have a response to this question at this time.

b. **When should the Commission evaluate the outcomes of the first version of IGFCs?**

The Council does not have a response to this question at this time.

18. **How should the Commission address under- or over-collections for the first version of IGFCs?**

The Council does not have a response to this question at this time.

a. **Should under- / over-collections be addressed through existing processes, such as through balancing accounts? Or should the Commission authorize a new expedited process?**

The Council does not have a response to this question at this time.

b. **If a new process is authorized to address under- / over-collections what should be the trigger for initiating this process?**

The Council does not have a response to this question at this time.

c. **What rate adjustment(s) should be used to address revenue imbalances? Examples: adjustments to total revenue collected through fixed charges, income thresholds, income-based differentiation of IGFCs, volumetric rates.**

The Council does not have a response to this question at this time.

19. The SMJUs argued that the more complex aspects of parties' IGFC proposals should not apply to SMJUs, who have far fewer California customers than the large IOUs.

The Council does not have a response to this question at this time.

a. Should the Commission adopt directions for the first version of IGFCs for all IOUs, with specific modifications for SMJUs? If so, what specific modifications would you recommend for SMJUs?

The Council does not have a response to this question at this time.

b. Should the Commission adopt directions for the first version of the SMJUs' IGFCs based on one of the SMJUs' proposals? If so, which of the SMJUs' proposals do you support?

The Council does not have a response to this question at this time.

IV. CONCLUSION

The Council appreciates the opportunity to submit these Opening Comments.

Dated: July 31, 2023

Respectfully submitted,

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