**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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| Order Instituting Rulemaking to Examine the Commission's Post-2008 Energy Efficiency Policies, Programs, Evaluation, Measurement, and Verification, and Related Issues. | Rulemaking 09-11-014 (Filed November 20, 2009). |

# COMMENTS OF THE LOCAL GOVERNMENT SUSTAINABLE ENERGY COALITION ON ASSIGNED COMMISSIONER'S RULING SOLICITING COMMENTS ON ENERGY EFFICIENCY SAVINGS GOALS AND OTHER PORTFOLIO PLANNING MATTERS

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# I. INTRODUCTION

In accordance with the November 17, 2010, *Assigned Commissioner's Ruling Soliciting Comments*, the Local Government Sustainable Energy Coalition ("LGSEC")[1] submits these comments on issues related to planning for the next cycle of energy efficiency programs. The LGSEC has participated actively for many years before the California Public Utilities Commission ("Commission" or "CPUC"), representing the interests of local governments on energy policy and planning issues. In the process leading to the adoption of the current 2010-2012 energy efficiency program cycle the LGSEC advocated on several of the issues contemplated in the Ruling. We are glad to see the Commission taking action on these issues.

The LGSEC commends the Commission for developing the *Energy Division White Paper and Proposal on the 2010 Energy Efficiency Goals Update and Related Matters* ("White Paper"), which is attached to the Ruling. The White Paper proposes that the current program cycle be extended one year through 2013, and subsequent cycles to extend over four years, rather than three years. The White Paper also discusses many activities that must be performed by both the CPUC and the California Energy Commission ("CEC") in order to establish energy savings goals for the next program cycle. In the context of extending the current cycle, the White Paper identifies several activities that could be included in this analysis of energy efficiency goals. Additionally, the White Paper discusses work required to update and report on progress on the *Energy Efficiency Strategic Plan*, and updates needed for the cost-effectiveness methodology used to evaluate energy efficiency programs.

[1] Across California, cities, counties, associations and councils of government, special districts, and non-profit organizations that support government entities are members of the LGSEC. Each of these organizations may have different views on elements of this letter, which was approved by the LGSEC's Board.

The LGSEC agrees with the conclusion in the White Paper that "EE [energy efficiency] is at a cross-road…barriers such as cost-effectiveness, uncertainties about how to implement TMG [total market gross] goals, and the need for new approaches that increase IOUs' support for market transformation, and an overemphasis on "widget-based" savings impacts continue to present challenges."[2] We encourage the CPUC to move forward with the work required to eliminate those barriers. At this point, however, it is not clear that the Commission needs to render an opinion now on changing the current program cycle, or expanding the next cycle to four years. The Commission should take the next six months to examine the issues identified with an expansion of the program cycle, both in the White Paper and in the comments on the White Paper. Ongoing efforts in other areas, such as evaluation, measurement, and verification ("EM&V"), also should inform a determination on whether expanding the program cycle will meet coordinated and well integrated policy objectives.

LGSEC support to expand subsequent program cycles to four years will be contingent on whether or not the current portfolio development process can be positively modified to incorporate greater local government participation, as detailed below. Additionally, should the current program cycle be extended through 2013, the Commission should establish appropriate and realistic target and associated budgets for the additional year to avoid unnecessary administrative burden on the utilities, third party implementers, and local government partnerships.

[2] White Paper, p. 12.

## II. RESPONSES TO SPECIFIC QUESTIONS POSED IN THE ASSIGNED COMMISSIONER'S RULING

*1. Are the stated pros and cons associated with Option A accurate and complete? If not, what changes or additions would parties make?*

The LGSEC generally agrees with the analysis of Option A presented in the White Paper.

*2. Are the stated pros and cons associated with Option B accurate and complete? If not, what changes or additions would parties make?*

The White Paper accurately recognizes that parties will demand greater access to and influence on decisions that affect portfolio composition. In the case of local government partnerships, the Commission can ensure it is receiving a balanced assessment of program effectiveness by allowing reporting directly from the local government partners. Local governments bring a different perspective because we increasingly are offering public goods charge programs in conjunction with programs funded through other sources unique to local governments, for example, locally funded climate action plans ("CAPs"); American Recovery and Reinvestment Act programs, including millions of dollars in block grants directly to cities; and statewide financing programs under Energy Upgrade California (in lieu of, or until a resurrection of, Property Assessed Clean Energy financing). Leveraging different sources of funding adds to the cost-effectiveness of programs.

Local governments are positioned to influence behavior change by virtue of our daily interactions with individuals and businesses. Local governments are not bound by the institutional barriers within utilities that historically have prevented the utilities from integrating programs across areas, for example demand response, energy efficiency, and renewable energy. Local governments also are making decisions on critical land use and building decisions that transcend the influence of utilities or the CPUC, but can impact the success of CPUC policies. For the Commission to responsibly set policy, LGSEC believes the Commission is obligated to hear directly from local governments, a critical link in effecting environmental and energy policy goals that coincide with state goals. For example, local governments, individually and as part of regional collaboratives, are developing CAPs that will implement new policies and ordinances that will impact energy consumption, building labeling and benchmarking, renewable energy utilization, green building development, and other relevant programs. The utilities, as the beneficiaries of the implementation of these programs, should be supportive and active partners with local governments in the development of the CAPs.

In considering Option B, a particular area of concern is the disposition of programs that are perceived to not be effective. A fundamental question is who can identify a program that is not performing to expectation, and by what process. Should this be determined solely at utility discretion (or under current regulatory procedures)? The Commission must establish a process by which local governments are substantively involved in developing the portion of the portfolio for which they will be responsible. No other utility stakeholders have the ability to make significant, long-term impacts on future energy use and energy efficiency as local governments. A much more collaborative discussion of this process is needed.

Should the program cycle be expanded, four years would be too long to be involved with a program that is not working, or to wait to introduce an innovation. Local governments must be able to participate in the discussion of whether programs are effective and how, or to adjust programs to make them more effective. Additionally, local governments must be able to design unique and cost effective programs that meet the many needs of their particular community and region.

The LGSEC is mindful that local governments serve as a nexus, integrating various local, state, and federal initiatives, all under careful public scrutiny. Additionally, Governor-elect

Brown has pledged to return funds and decision making to local governments; the Commission should advance its leadership in this area by explicitly incorporating local governments into the energy efficiency and related planning cycles in a more meaningful, timely, and participatory manner.

> *3. Are the estimated timelines associated with Option A and B reasonable with regard to the timing of (a) a goals/portfolio guidance decision, (b) preparation of portfolio applications, (c) review/approval of portfolio applications, and (d) implementation of the portfolio decision?*

The estimated timelines presented in the *Staff Report* are optimistic, given the innumerable delays and disruptions over the past few years. Members of the LGSEC have been participating in this process since the first programs were put out to bid in the wake of the energy crisis nearly ten years ago. It is our collective experience that the preparation of portfolio applications always occurs in a manner that, from the perspective of utility "partners," is not transparent. Some will argue this dynamic is created by delay in receiving program direction from regulators. Others will maintain that the lack of true collaboration could be cured by a change in utility corporate culture toward local governments, in which the unique ability of local governments to pull together disparate policy objectives and reach a range of individuals and businesses is truly valued. The CPUC should directly engage with local governments in the preparation of the local government element of the portfolio.

Another area that historically has been challenging is the time required for contracts to be negotiated and reviewed by utilities and local government partners. An example of local governments providing solutions to the process includes LGSEC's recommendation for the Commission to direct the utilities to create "evergreen" clauses for local government partnerships. This clause would allow local government partnerships to continue their programs while avoiding the prior lengthy delays, and with modification where warranted, unless there is a documented problem with local government partner performance, or there is a change in State policy.[3]

Another issue the Commission should incorporate into any decision on the energy efficiency program cycle is the timeline for related programs. For example, the Demand Response portfolio is not currently on the same cycle as energy efficiency, which causes coordination difficulties. The current Demand Response cycle ends in December 2011. As the Commission considers how to create a true Integrated Demand Side Management program, it should also consider synchronizing Demand Response, as one key example, with the CEC and legislative requirements identified in the White Paper when deciding on the length of program cycles.

> *4. One disadvantage of Option B is that a four-year portfolio cycle could mean longer persistence of programs that are performing poorly in the view of some parties. What, if any, specific procedures (e.g., trigger mechanisms) or review processes (e.g., formal or informal) do parties suggest to mitigate these concerns?*

All programs should not be locked into a four year box. For example, innovative pilot programs may have a logical life span for implementation and testing that is shorter than four years, while some innovative long-term programs that local governments implement may make sense to run longer than four years, especially in meeting goals of the *Strategic Plan*. Whenever a "one size fits all" model is created there are bound to be exceptions that need to be made if we are genuinely interested in comprehensive program success.

The Commission should be mindful, as it contemplates the question above, of the converse: there may be programs that could perform better if they had an opportunity for modification, but that may be hampered by an inadequate review process. The Commission

[3] *Comments of the Local Government Sustainable Energy Coalition on Amended Utility Applications for 2009-2011 Energy Efficiency Programs* , p. 17, April 17, 2009, in A.08-07-021 et al.

could consider an annual meeting to review overall portfolio status, conducted with input from all third party implementers and local government partners. Separately, the Commission should establish a regular meeting cycle with individual third parties and local governments, which will allow for meaningful dialogue between Commission staff and the entities implementing the programs. Under the current system, the majority of the information the Commission receives is provided by utility regulatory staff and lawyers. Additionally, the Commission should ensure that energy efficiency staff visits the energy efficiency programs being implemented, in the field. How better to understand whether a program is effective than to observe it in action?

*5. Do parties concur with the following Energy Division recommendations associated with Option B?*

*a. Adopt an extension through the end of 2013 for the 2010-2012 efficiency programs; and*

*b. Adopt four-year portfolio cycles on a going forward basis, beginning with a 2014-2017 portfolio cycle.*

As indicated above, the LGSEC is not prepared to issue an opinion on Option B until more information is available on the issues discussed above. (See also response to next question.) A key factor in any support we might have for Option B will be conditioned on the CPUC defining a clear and meaningful role for local governments in developing energy efficiency portfolios given the unique involvement, resources, and benefits local governments bring to energy efficiency programs. Another caveat is that the funding for 2013, a potential additional year on the current cycle, must be reasonably allocated based on program need. When the 2006-2008 program cycle was extended through 2009, funding was allocated based on a monthly goal. This meant that programs were not able to operate at their optimal design, which was never based on fluctuating monthly results. This allocation device actually *prevented* local government partnerships from exceeding their monthly potential; for example, to take advantage of seasonal surges in activity due to weather conditions, pursuing projects with substantial energy savings that would exceed the monthly limit, availability of student interns, or other factors.

No matter what the length of the cycle (but particularly with four years or more) there needs to be flexibility during the cycle to modify programs or add new programs as the policy world and the technological world continues to evolve. There must be a mechanism in the process to ensure that the next great energy efficiency idea can be accommodated without waiting for four or more years.

*6. Are there other options the Commission should consider, other than Options A and B? What are the pros and cons of these options?*

Options A and B consider the issues with which the CPUC is grappling in terms of interagency coordination, timing of evaluation studies, and regulatory application and review processes. The best way to proceed, however, might not be by following Option B strictly as stated. Rather, the LGSEC suggests deferring a decision until the end of Q2 of 2011, when more progress will have been made on all the issues raised by the White Paper. At that time the Commission should be in a better position to decide if indeed a modification of Option A is viable or desirable. It may be that it would be worth pursuing a hybrid framework that could include programs with reliable savings over the near term along with initiatives that would be rolled out on a separate schedule with new metrics for estimating efficiency potential, alternatives for cost effectiveness evaluation, and a formula based goals framework as described on the other. The Commission could then direct the utilities to begin preparing a portfolio that would meet the near-term needs of the state under the current program cycle.

At the same time, with more information in hand by mid-2011 and presumably improved efforts at statewide coordination in place, the Commission could determine more precisely the best method of integrating the forward-thinking elements of an Option B that, given the new information available, may not lend itself to a fixed *four*-year program cycle. At that time the Commission could identify the terms, schedule, and procedures for a new approach that would meet the longer-term goals established in the Statewide Strategic Plan, while ensuring that efforts at near-term savings, such as new lighting technologies, are aggressively pursued in a fixed cycle that would satisfy utility shareholder incentive interests. Deciding now, rather than six months from now, provides no real advantage because there will still be time before 2013 to undertake the inevitable disruptions of amending goals, budgets, and contracts. In the alternative, making this decision with more data will allow the Commission to avoid the potential mistake of a premature decision on a fixed length of program cycles that could compromise the optimum path forward that would coordinate schedules with other state agencies.

In any case, it should be recognized that there is no assurance that the portfolio application and review process will conform to any given pre-set schedule, given recent history. Advice letters with changes to the 2010-12 program cycle continue to be filed. Option B with its new approaches to estimating potential savings, options for goals frameworks, and alternative approaches to cost-effectiveness evaluation, presents a high possibility that the utilities would need more time to comply and possibly dispute the calculation of shareholder incentives. One should expect as well that Energy Division review would necessarily take longer considering the anticipated radical shift in policy and calculation metrics.

Given the inevitability of dramatic changes on the horizon, the LGSEC strongly advocates that local governments play an increasingly vital role in shaping the course of energy efficiency and integrated energy policies in California. Time is of the essence in combating the devastating effects of global change on California's coastline, inland waterways, and infrastructure – whose costs will be borne by local and state public entities. This reality must be factored in when determining the direction of energy efficiency program spending over the next three, four, or eight years now under consideration.

> *7. Is Energy Division's proposal to update or incorporate each of the following cost-effectiveness data inputs or methodologies, prior to commencing potential and goals studies, reasonable?*
>
> > *a. Data updates including natural gas prices, electricity prices, and temperature profiles by climate zone, per the Commission's March 2010 Report to the Governor and Legislature pursuant to Pub. Util. Code Section 2827(c)(4);*
> > *b. New methodology for generation capacity cost, per the Commission's AB 920 Report;*
> > *c. New avoided cost for avoided Renewable Portfolio Standard (RPS) purchases, per the Commission's AB 920 Report; and*
> > *d. Update to avoided carbon costs, per the most recent Market Price Referent (MPR).*

The LGSEC has no objection to the proposal for updating the inputs and methodologies identified above. We note that one of the most significant issues that drives decision-making is the evaluation, measurement, and verification ("EM&V") process. The current EM&V process needs to be replaced with methodologies that support strategic direction and innovation to move energy efficiency forward to meet the bold objectives of the *California Energy Efficiency Strategic Plan*. Better (user-friendly and streamlined) evaluation processes would do a lot to reduce the need for longer program cycles. Decision 10-10-033 orders significant work to refine and streamline EM&V. Any decisions the Commission makes on the issue of program cycle time frame should incorporate the work that will occur pursuant to D.10-10-033.

Related, there are many details that will need to be worked out if the program cycle is extended related to revised goals and targets, revised program budgets, program design flexibility for the fourth year, and contract modifications with implementers. The amount of time and care required to sync these elements should not be discounted. Ensuring that these details are addressed upfront should help avoid the challenging process that occurred with the 2009 bridge funding.

The LGSEC has previously suggested that the Total Resource Cost test may not be a valid test of cost for local government programs. We specifically requested that this be addressed in preparation for roll-out of the next program cycle, which is currently slated to begin in 2013.[4] Even further back the LGSEC suggested that a more accurate way to evaluate programs might be to look at the bottom line of whether a customer is reducing energy usage, and making a concurrent reduction in GHG emissions, through participation in various energy management programs, some of which may not be strict energy efficiency, and may not be offered by the utilities.[5]

> *8. Energy Division views the Strategic Plan update ordered in D.08-09-040 and the Strategic Action Plan Progress Report called for in June 2011 pursuant to D.09-09-047 as complementary. Will jointly addressing the Commission's orders for a Strategic Plan update and a Strategic Action Plan Progress Report effectively provide stakeholders, including parties to this proceeding, sufficient guidance?*

This proposal from the Energy Division seems reasonable. Parties have not yet had the opportunity to work through a comprehensive Progress Report, because the first one is not due until June 2011. The LGSEC believes that local governments could be much more aggressive on meeting the goals of the Strategic Plan if their proposals were not submitted to the utilities but directly to the Commission. Strategic Plan activities in general contribute neither to utility portfolio goals nor to utility shareholder incentives under the current system. The CPUC should incorporate in its review of the June 2011 report an opportunity to engage local governments in decisions on how to strengthening the objectives of moving recommendations under Option B of the White Paper.

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[4] *Motion Of The Local Government Sustainable Energy Coalition To Amend Bridge Funding*, p. 6, June 25, 2009, filed in A.08-07-021 et al.

[5] *Comments of the Local Government Sustainable Energy Coalition on Energy Efficiency Programs and Strategies*, p. 8, 7/10/07, in R.06-04-010.

## III. CONCLUSION

Expanding the program cycle to four years, and extending the current cycle through 2013, is an action with significant ramifications. The Commission should spend the next six months implementing D.10-10-033 regarding EM&V and more fully consider the issues raised in the comments on this proposal before it takes any action. Regardless of the time frame for the next program cycle, the process for developing the portfolio must incorporate direct engagement with local governments on the element(s) of the portfolio which local governments implement.

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## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of "Comments of the Local Government Sustainable Energy Coalition on Assigned Commissioners' Ruling Soliciting Comments on Energy Savings Goals and Other Portfolio Planning Matters" on all known parties of record in R.09-11-014 by transmitting an e-mail message with the document attached to each party named in the official service list, and by serving a hard copy on the Administrative Law Judge.

Executed on December 3, 2010

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