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MEMORANDUM

TO: Local Government Sustainable Energy Coalition

FROM: Jody London

DATE: September 17, 2009

SUBJECT: All-Party Meeting and Summary of Comments on CPUC Proposed Decision on 2009-2011 Energy Efficiency Portfolio

This memo summarizes yesterday's all-party meeting at the California Public Utilities Commission ("CPUC") on the Proposed Decision on the California investor-owned utilities' energy efficiency portfolios for 2010-2012 (the program cycle was originally supposed to be 2009-2011, but the Proposed Decision would change that). This memo also includes as an attachment rough notes on most of the comments filed earlier this week on the Proposed Decision. At the end of the memo, I explain why I do not think we need to file reply comments on Monday.

The All-Party meeting was presided over by Commissioner Dian Grueneich and Administrative Law Judge Dave Gamson, with two of Grueneich's advisors also on the dais. They asked very few questions, except when Commissioner Grueneich would press a party on whether evidence for a particular argument was in the record.

Summary of Positions

Overall, the utilities are extremely unhappy with the Proposed Decision. They are particularly upset at how the Proposed Decision cuts their budgets, imposes caps on various cost categories, modifies energy savings goals, and generally engages in what they perceive to be micro-management. On the question of the cost category caps, the utilities argue that the study from which comparisons in other were drawn is incomplete and looks at markets that are less mature than California, so there are easier (and cheaper) savings to be had in those states. The Utility Reform Network, which introduced the study into the record, defends it. The utilities also argue that the CPUC cannot compare the administrative costs of the California Solar Initiative and Self-Generation Incentive Program, as those programs are less complicated than the energy efficiency program.

The utilities, as well as several third party implementers of energy efficiency programs, are concerned with the Total Resource Cost ("TRC") being moved to 1.5, when it has historically been 1.0. The California Energy Efficiency Industry Council, offered information on the genesis of the TRC, explaining that as originally designed the TRC should measure more externalities than the current version of the test. The current test undervalues energy efficiency.¹ The utilities argue that the aggregate impact of all these changes in the Proposed Decision makes

¹ It appears that the ALJ and Commissioner Grueneich may not grant this newly formed group's motion for party status, which was filed in June, in which case their comments would not be considered in the record.

the program as envisioned unworkable. PG&E, in its written comments, most clearly sums up these concerns by explaining that it will be forced to cut programs in order to meet the caps and TRC. This will reduce the number of program participants, which will in turn make it difficult to meet the energy savings targets.

At the all-party meeting, Southern California Edison (“SCE”) expressed concern with the Proposed Decision delegating to the CPUC’s Energy Division program implementation work that SCE believes belongs with the utilities. All the utilities are concerned with the major changes the Proposed Decision makes to the lighting programs. They are joined in this by the Natural Resources Defense Council.

Many groups, either at the meeting and/or in their comments, asked the CPUC to clarify the Proposed Decision’s findings on the termination of bridge funding. Most groups suggest it must extend beyond the end of the year. San Diego Gas & Electric and Southern California Gas suggest it be extended on a month-to-month basis until the CPUC approves the compliance filings.

I spoke on behalf of the Local Government Sustainable Energy Coalition (“LGSEC”). I urged the CPUC to allow local governments to help them, and to include in local government partnership programs on a focus on building institutional capacity. We asked the CPUC to allocate an additional \$250 million for local government programs. I pointed out that much of the Proposed Decision orders the utilities to file reports on local government programs without consulting us. We requested the CPUC allow a task force to focus on what is needed to facilitate transfer of energy use data to local governments. The City of Oakland Public Works Agency offered a similar suggestion in written comments. We joined the chorus requesting clarification that only utility administrative costs are subject to the 10% cap, and extending the bridge funding close. The City and County of San Francisco offered its own experience as an example of why the administrative cap must be clarified. I also offered suggestions on how to make a Statewide Coordinator more useful, something that DRA touched on in its written comments. (The utilities of course do not like the idea). Although I did not in my oral comments talk about the clarification needed with regard to savings from Stimulus funds, several parties expressed similar concerns in their written comments, including some of the utilities.

The only groups that appear to somewhat support the Proposed Decision are the Division of Ratepayer Advocates and the Utility Reform Network (“TURN”). These groups both believe that the Proposed Decision still is giving too much money for too few savings. They point to the fact that the budgets approved in the Proposed Decision are still higher than the budgets for the 2006-2008 program cycle, but the savings goals are lower. TURN argues that activity related to meeting *Strategic Plan* goals be overseen by the CPUC Energy Division. Both TURN and DRA asked the CPUC to clarify that the cap on administrative costs applies only to the utilities, not to third parties or local government partners.

Two other groups spoke at the all-party meeting who have not previously been active. First, the California State Treasurer asked for \$100 million to establish a revolving loan program for State entities. Eventually they would like to expand it to local government entities. Second, a company called Positive Energy asked the CPUC to allow the utilities to include savings from



programs that create behavioral changes. This is the company that is running the pilot for the Sacramento Municipal Utility District. The programs sends residential customers comparisons of their energy use against the energy use of similarly situated customers, and is reportedly producing favorable results (the speaker was quoting annual reductions after two years of about 3-4%).

Rocky Bacchus continued at the all-party meeting and in his written comments to pitch his upstream program for HVAC. He touts its high TRC and buy-in from manufacturers and retailers, who are ready to go if the CPUC will give this program the green light. Barbara George from Womens Energy Matters used her five minutes to continue to harp on PG&E for its opposition to community choice aggregation, and to further her assertion that PG&E is using ratepayer funds and promising energy efficiency programs to cities that do not join aggregation efforts. She apparently has videotape of senior PG&E staff speaking before the Novato City Council.

Finally, the former Chair of the Assembly utility oversight committee, Lloyd Levine, spoke on behalf of two groups, Californians Against Waste and the Campaign for Recycling. Levine is very proud that when he was in the Assembly, he passed legislation the phases out incandescent bulbs. He urged the CPUC to conform the direction in the PD on CFL disposal to language in a bill pending on the Governor's desk: AB 1173 (Huffman).

What to Expect

Reply comments are due next Monday, September 21. I do not think we need to file reply comments. The utilities made it clear in their written comments and at the all-party meeting that they intend to cut local government programs if the Proposed Decision is adopted, so our point on the impact of the administrative cap has been made. I was able to use the oral comments to hit on most of our key points. We have support on many of our issues in the opening comments from a range of parties. From a practical standpoint, I am not sure that the CPUC staff will have an opportunity to review the reply comments and incorporate them before this is brought to a vote on September 24. If you feel strongly that there is something on which we should file reply comments, please let me know right away.

Several parties have had one-on-one meetings with Commissioner Grueneich. I imagine they also are meeting with the other Commissioners, and/or their advisors. It seems likely that the utilities in particular are looking for another Commissioner who will sponsor an alternate decision that at minimum addresses the cost cap issue, as that seems to be the biggest concern. It is unclear whether another Commissioner will want to write an alternate, or whether they will push on Commissioner Grueneich to modify the Proposed Decision. If there is an alternate decision, the comment cycle is triggered again, adding further delay. Another factor here will be how committed Commissioner Grueneich is to the portfolio laid out in the Proposed Decision. Either way, I expect that the decision will be held next week and the earliest it would be voted out is in October.

Please contact me with any questions or comments.



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ATTACHMENT A
Comments on Energy Efficiency Proposed Decision
Notes – 9/15/09

GOVERNMENT ENTITIES

Association of Bay Area Governments:

CPUC should support development of municipal financing districts, and should allow utility participation. Right now the PD appears to preclude that activity.

City and County of San Francisco:

Clarify language around local government direct install programs – they are not all the same. While there may be a problem with some of the administrative costs, that is probably in the utility-designed programs, not the ones that local governments themselves have developed. Note that local governments have no control over the amount of admin costs that utilities assign to their partnerships.

Too much of a limit on non-customer rebates could have adverse impact on comprehensive, long-term programs. Separate *Strategic Plan* activities within administrative budgets, and make sure Energy Division is able to continue to oversee *Strategic Plan* progress. Let Local Government statewide coordinator be selected by Energy Division with input from local governments, and make sure budget is adequate. Consolidate the follow-on filings related to local government programs down to two: one report from the Energy Division on *Strategic Plan* work, and advice letters from utilities that lay out all local government partnership budgets and activities, including pilots and any justifications for changes to local government direct install programs. Need adequate funding for local government partnerships. Utilities should make individual data available to utilities.

City of Oakland, Public Works Agency:

Cities gave utilities franchise agreements years ago to facilitate delivery of essential public services. Now cities have responsibilities that require data that comes out of the franchise agreements, names energy usage data. CPUC should authorize a collaborative process to facilitate exchange of energy usage data.

Local Government Sustainable Energy Coalition:

In order to reach more local governments, CPUC should allocate an additional \$250 million to local government partnerships, both existing and new. Can tie to adoption by the local government of certain criteria that demonstrate commitment to energy efficiency, etc. Need a different cost-effectiveness metric for this work. Points out conflict between the cost-effectiveness metrics, shareholder incentives, and ability to meet *Strategic Plan* goals. Asks for CPUC that any filings about local government partnerships should be prepared in conjunction with local government partners; still questing for collaboration between the utilities and local governments. Calls for a task force to work on the building benchmarking issues; supports apparent direction in the PD to use EPA Portfolio Manager as the platform. Also asks for clarification that the cap on utility administrative costs should not be passed on to partnerships. Asks for local government involvement in defining the role and responsibilities of a Statewide Coordinator for local government programs; as defined in the PD, this position is too much

reporting, not enough focus on actual implementation, bringing more local governments in to this work. Suggests Local Government Commission is logical entity to manage this work. Points out inconsistencies in the PD in several areas: in SCE's partnership model, local government must be able to market if they want to "move up" the ladder, so the cap on marketing will limit their ability to succeed; must clarify that local governments can claim credit for leveraging ARRA funds, even if the savings are claimed by utilities because the program also used ratepayer funds; bridge funding end date must not be 12/31/09; need a master calendar for all the next steps.

UTILITIES

SCE:

The cost caps should be eliminated. Affirm that IOUs are the program administrators. Don't like requirement for IOUs to fund a statewide coordinator with ratepayer funds – that's an inappropriate use of those funds. Insisting on a TRC of 1.5 means some cost-effective things will not get done. Arbitrary budget cuts make it even harder to meet the anticipated savings because that gets at program design, how the savings were to be achieved using marketing, etc. Wants to be able to roll out contracts Jan. 1, 2010 and not have to extend through March 2010. Need to distinguish between utility programs and third-party and local government – if they can get contracts in place sooner that's great, but we need the placeholder, based on history. Doesn't like the ARRA reporting requirement – utilities simply cannot track each and every source of funds that are used in a project. PD misunderstands the on-bill financing program proposed by SCE. Wants to retain marketing and outreach in partnerships, but doesn't view it through same lens as LGSEC: "IOUs should not be limited in their flexibility to offer marketing to local government partnerships as appropriate." Lots around DEER, how savings and goals calculated, etc. Protective of utility administrator role – says too much is given to the Energy Division in the PD. Energy Division should not be setting up and running all the task forces called for in the Proposed Decision. IOUs should at minimum co-chair the task forces. PD is micro-managing the program design. Disputes the reduction in funds for lighting. Argues for maintaining Palm Desert partnership – says it has meet TRC of 1.1 and finally ramped up and ready to roll.

PG&E:

The PD creates "absolute pandemonium" – more aggressive program with less money to do it. Must have clear and achievable annual goals. The caps must go; if they remain, PG&E will be forced to cut a number of programs, which will result in lower participation and hence decreased ability to achieve savings goals. Also would move programs to industrial, which are more cost-effective than residential. Further, the PD calls for more regulatory filings, while at the same time limiting admin costs. Administration of energy efficiency program is more complicated than the CA Solar Initiative or Self-Generation Incentive Program. PD fails to acknowledge the modifications PG&E has made over past two years to its originally filed portfolio. Table 1 lists the many programs it will have to cut in order to meet the goals and budget in the PD, including local government *Strategic Plan* efforts and PG&E's Innovator Pilot and Green Communities programs. Disagree with changes to lighting program, removal of budget for integrating DSM programs. Strongly disagree with requirement for cumulative goals. Does like that the PD would use ex ante goals, and use the same DEER values for the entire program cycle. Need to clarify that projects can receive both ARRA and ratepayer funds. Don't preclude utilities from working



on municipal finance programs. Must remove 30% cap on on-bill financing administration costs. Request clarification that they'll be able to claim all savings from codes and standards work.

SDG&E/SoCalGas:

Goals and budget in the PD must be adjusted. The cost category caps inhibit innovation. If you must keep caps, must do much better definition of what is included in the cost categories. Don't limit utility participation in programs that also use ARRA funds. Approve bridge funding on month-to-month basis until compliance filings are approved. Similar arguments against caps, and the comparisons on which they are based, as the other utilities. Same with the TRC and fund shifting guidelines. Also disagree with the PD's direction on lighting. Reduce the target for the Whole House program. Don't mess with the budget for on-bill financing. Retain the Palm Desert partnership. And of course, don't mess with the incentive program they've been using for years – that alone cuts their budgets by nearly half.

THIRD PARTIES

National Association of Energy Service Companies (NAESCO):

Questions the instructions on bridge funding – need clarification. Concerned about effect of a 1.5 TRC on HVAC, whole house programs. Hard to be comprehensive with high TRC. Suggests using most recent DEER numbers, at minimum, to help with this.

Questions several of the details on contracting in the PD, for example, limiting ability of utilities to transfer funds between programs, requiring pre-inspection of customer premises for installed equipment by program implementers, requiring program implementers to break down bids into component elements. This last item, NAESCO claims, impacts ability to bid lowest cost. All the above add additional costs.

Concerned about direction in the PD to further investigate cost-effectiveness or other performance metrics for ARRA projects. Says we don't have time for that. Also need to be mindful of prevailing wage requirement and Buy American requirements in ARRA. Must have any changes within 30 days of final Decision, and CPUC must be specific. The clock is ticking. Likes the direction on mandatory benchmarking, but points out there is a cost associated with using Energy Manager, in terms of data collection and entry. Suggests that either customers be required to provide the information for each building, which would likely reduce the number of participants, or this be something that the program implementer does (need to include in their budget).

California Energy Efficiency Council:

Approve the PD with all haste. The TRC is not being applied as originally designed. It should measure many more externalities. The budget caps create problems. Furthermore, they should not flow down to third parties or local government partnerships. Just eliminate them – they detract from ability to innovate. Eliminate the 25% cap on third-party funding. Clarify what the PD is doing with bridge funding, and do not have it end 12/31/09. Do not dictate the details of benchmarking, and be sure to address confidentiality concerns, which is a major barrier to benchmarking. Clarify what's going on with ARRA funds; if there are both ratepayer and ARRA funds, give the savings credit to the utilities.



Quest:

Caps are going to limit ability to get to hard-to-reach sectors and be comprehensive. There is no context for the comparison data used to establish the caps, for example, how mature are those markets? Also concerned about limiting third-party management of local government partnership programs, pointing to Quest's management of two of the three partnerships that are cited in the PD as being comprehensive.

RATEPAYER GROUPSDivision of Ratepayer Advocates:

Concerned that it's still an expensive portfolio for the amount of savings. PD lacks a methodology to show that the cuts made to the utility budget will lead to long-term savings that support goals of the *Strategic Plan*. The 10% cap on administrative costs should be inclusive of all administrative costs. If you add on the marketing and evaluation caps, it's a total of 20% for administration and marketing. Need to be sure the 10% cap includes costs that are recovered in general rate cases ("GRC"). For example, employee benefits come through the GRC, as well as things like postage, communications, human resources, accounting. Wants more stringent language around utilities only being able to shift 10% of funds within and between programs in a three-year cycle. Likes the PD's take on lighting, and points out where the allocation of lighting budgets should be adjusted to conform to the PD. CPUC must give stronger guidance about upstream lighting programs. PD errs in not requiring that disposal costs associated with CFLs that contain mercury be included in the program. Need better scrutiny of the third-party bids – the 20% requirement for third party programs has become a set-aside. There's not much difference between the programs that third parties run for the utilities' in-house programs, and the third-party programs. CPUC should direct the Energy Division to conduct a process review of the third-party bid program and determine whether it's really leading to innovation. The Statewide Coordinator position for helping local governments must either advance local government participation or not be adopted. Would be better to revise the role. The position could also be a Local Government Ombudsperson to the CPUC. This position should not be housed in or funded by any entity that currently has a financial arrangement with any utility-funded program. CPUC will need to make sure the money is well-spent.

Need better milestones around defining market transformation criteria. Suggests changes to the process for revising performance metrics, starting with having the exercise led by the Energy Division, not the utilities. The Peer Review Group ("PRG") should be eliminated, there's not much for it to do anymore. Instead, use the task force employed to develop the *Strategic Plan*. Recommends some modification to all the compliance advice letters. Need more guidance on how folks will use the energy efficiency brand ordered in the PD. Use the experts the CPUC hired to really make it work.

TURN:

The PD is giving the utilities more than they deserve, especially after how unresponsive they have been during this process. CPUC should not be deterred when the utilities cry that it's not enough money – it will be. The PD is wrong to freeze the DEER values over the life of the program cycle. Like the cost caps and the limits on fund shifting. Asks CPUC to confirm the cap on administrative costs applies only to the utilities, not to third party or local government partnership programs. Clarifies that on the issue of CFL disposal, the PD did not completely



understand their position. It's not that ratepayer funds should be used for disposal, but that they are leveraged to encourage recycling and proper disposal. TURN says it never raised a concern about whether there's an advantage to direct install programs run by local governments. Rather, TURN's concern was with utility administrative costs added on to the direct install programs that local governments operate – TURN sees that as further evidence of utility inefficiency.

