Draft 3: May 16, 2016

Separating the Roles of Energy Efficiency Administration from Implementation and Related Issues

Position: The following stakeholders (x, y, z) want to see a clear line of separation between the roles of administrators and implementers, and all energy efficiency activities that are not administration are outsourced[1]. The supporters of this position envision that outsourcing of program implementation could be done via 1) very clearly designed and specified programs, 2) general RFOs that identify a target market with general guidelines, or 3) some combination of the two.

Why: Outsourcing allows for increased competition on a level playing field among providers, and creates benefits for ratepayers compared to having the administrator staff implement work, sometimes in competition with their own implementers. Outsourcing allows Program Administrators to:

- Select the highest value options and activities to achieve goals;
    - Putting programs out to bid allows for price discovery, and will generate innovative approaches for delivering programs.
- Consider a full array of options/solutions;
- Pull from a national and global market of ideas;
- Simplify the reporting on administrative costs and regulatory reporting;
    - The focus will be on providing programs that deliver savings for the least cost.
    - Administrative costs will be straightforward to track – these will be the only program administrator costs.
    - Incentives between ratepayers and utilities align – implementers would only be paid for completing activities that support/produce savings or support other goals such as education as specified in their contracts.

Separating the roles of those who administer and those who implement enables the benefits of competition to come more fully into play to develop value for ratepayers. This competitive market can be distorted if the buyers of the service (administrators) are also sellers (implementers). In Wisconsin, for example, the administrator of the efficiency portfolio is not allowed to also implement due to

[1] We use 'outsourcing' here to be the generic approach of using non-internal Program Administrator staff for particular work. Finding external labor resources to perform the work is normally done through a competitive bidding process that can either be a "Request for Qualifications" (RFQ) or a "Request for Proposals" (RFP). In some cases direct awards can also be an appropriate solution, typically when time frame is short and/or contract value is low. RFQs will generally allow the Administrator to find a set of companies that they can use for various tasks/work when needed. RFPs are generally used to develop and award work to specific companies. Outsourced work does not mean that the contract mechanism is based on time and materials (T&M) or pay for performance (P4P). Outsourcing is agnostic as to the exact contract mechanism.

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conflict of interest issues. Similarly, the CPUC requires a separation of roles when utilities purchase electricity. In this situation, the CPUC has decided that "utility-owned generation projects should only be considered after an RFO for independent generation has failed"[2]. In other states such as Illinois, utilities like ComEd are not mandated to bid out all implementation but they have chosen that path as the most efficient and effective way to manage their portfolio.

To fully leverage competition and create a level playing field for implementation, administrators should not be implementers, except as described in the exception below.

This move to separating the roles of administration and implementation can help address current issues experienced in California:

- Third party, independent implementers sometimes overlap/compete with administrators' 'core' programs which is a problem since the administrators are not subject to the same competitive pressures as the independent implementers are. For example, third party implementers are often on pay-for-performance contracts with no guarantee of recovering costs until savings are delivered. In contrast, since administrators recover staffing and operating costs on a continuous basis via balancing accounts, they have relatively protected cost recovery. In addition, administrators know the cost structure, marketing strategies and other business-sensitive information of all their implementers, thus giving them an advantage when they are designing and implementing programs that compete with a market that already exists, or when they are negotiating with other implementers; but the PAs own costs are not subject to such pressures in the same manner.
- Because Program Administrators can pick and choose what they bid out or keep internal, some market actors have experienced cost-effective programs being pulled in-house once they are shown to be successful, thus undermining competivie market players.
- Program evolution has slowed since so very little has been put out to bid in the last 8-10 years, while technologies have developed substantially. In addition, when programs were competitively bid a number of years ago, they were often in specialized niches that were intended to fill "gaps" in a largely static portfolio, or for very small pieces (such as emerging technology). The size of program design and implementation opportunities in California is very small compared to the rest of the nation, even though California has one of the largest efficiency budgets. As a result, innovation and program upgrades/new approaches have suffered from small and few bid opportunities over a long period of time.

[2] D 12-04-046 in Rulemaking 10-05-006 April 19, 2012. Conclusions of law #7 page 62 and Ordering Paragraph #5 page 65.

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Exceptions:

Exception 1 –IOUs serving in the implementation role (beyond the 10% administrative allowance discussed below).

There may be cases where IOUs are best positioned to efficaciously manage and implement certain programs or program elements compared to outsourced service providers. This might merit an "exception" approach, which is described below[3]. [NOTE: the group is open to practical suggestions on how to make this (or any alternative) exceptions process work. Ideas are welcome.]

The IOUs would be required to demonstrate that they would be the best at implementing particular activities. To make this demonstration, the activity should be part of an RFP process, to gain market discovery. RFPs should contain minimum qualifications and thresholds for pricing (based on knowledge the IOU should have from its extensive experience administering similar programs). If no bids are provided from entities that meet their minimum qualifications, or the pricing is above the pricing threshold, then the IOU may propose to implement those activities, demonstrating that they meet the minimum qualifications and receiving ratepayer funding at a level no higher than the pricing thresholds included in the RFP. The IOU would recover costs for an "exception" program in the same way that other implementers recover their costs, based on actual goal achievement, not through balancing account recovery.

For this exceptions process to work effectively, it is critical for an independent evaluator, with experience reviewing energy efficiency bids, to have access to all documents in the exception RFP process. The independent evaluator would provide an assessment of the bids received and the reasonableness of the RFP process and ultimate selection (or non-selection) of implementers. The independent evaluator would provide that assessment to the Energy Division and a group of non-financially interested stakeholders. IOUs would file the results of their bidding process and their proposed contracts, and any proposed "exceptions" in an advice letter. Members of the non-financially interested stakeholders can support or oppose an IOU advice letter.

Exception 2: Regional Energy Networks and CCAs

At this time, RENs and CCAs may take on the dual role of implementer and administrator, but this should be revisited if the budget administered by these groups reaches a threshold of 20% of the portfolio budget.

[3] Note to discussion group: I removed what was previously Option 1 since it didn't seem that anyone much supported it. Everyone seemed to prefer Option 2.

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Clarifying the Distinction between Administration and Implementation:

Since there are certainly gray areas between administration and implementation tasks, we suggest that the historic 10% allocation for administrative work already in place from the CPUC be used as a simple marker for administration. Thus, the Program Administrators would be limited to 10% of the budget (presumably mostly for administrative tasks), except as noted above where the Program Administrator makes a demonstrated case for additional funds to cover implementation tasks for which it is uniquely suited.

End the Category of "Core Programs": Adopting this position would erase the historic distinction of programs delivered by Third Party Providers (3PP) and those delivered by the utility and their contractors (often called "core" programs). Instead, the distinction would be between administration and implementation. Programs currently labeled as "Core" would also be outsourced. We believe that the solicitation design approach often used by PAs for Third party solicitations in which the program design is open and not prescribed is also important to fully leverage the benefits of competition and should continue for some part of the portfolio. Offering a balanced mix of solicitations with open design parameters along with some that cover already designed programs is the optimal solution to ensuring that the portfolio includes foundational programs along with targeted and innovative interventions.

Transition to a More Outsourced Portfolio:

Option 1: Bid out 25% of the budget per year each year for four years so that by 2020 the portfolio is completely bid out .

Option 2: Each PA proposes a transition process/schedule so that a fully outsourced (with the exceptions noted above) portfolio is achieved by 2019.

Option 3: Bid out 20% of budget (or savings) per year.

Learning as We Go (aka 'evaluation')

There is also a suggestion to evaluate the effectiveness of moving to an outsourced portfolio. Presumably the CPUC Energy Division would assess how outsourcing has impacted the portfolio after a few years of implementing the separation of roles.

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NOTES:

STATUS from May 9, 2016 Sub Committee Call

Attendees on the call:
Margie Gardner, Efficiency Council (and facilitator); Kellie Smith, Efficiency Council; Lauren Casentiti, Efficiency Council and Resource Innovations; Jenny Berg, BayREN; Matt Evans, SCE; Meghan Dewey, PG&E; Don Gilligan, NAESCO; Mike Campbell, ORA; Hannah Grene, CSE, Beckie Menten, MCE; Athena Besa, SDG&E.

Comment 1: No one has officially signed onto this position paper… but here's my sense of where various organizations stand… please correct this if it's wrong!

Supporting the basic proposal	Undeclared	Opposing the basic proposal
ORA; Efficiency Council; BayREN; MCE; NAESCO; CSE; [possible: The Coalition for Energy Efficiency may support. (Blue Green Alliance, California Advanced Lighting Controls Training Program, California Community Colleges, California Labor Federation, Center for Sustainable Energy United Association of Plumbers and Pipefitters, Sierra Club California, Sheet Metal, Air, Rail, and Transportation Industry, Operating and Stationary Engineers, International Brotherhood of Electrical Workers, National Electrical Contractors Association, TURN, Ucons)]	SCE; SDG&E; PG&E	

Comment 2: A workable exceptions process probably needs the most work/creative ideas.

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Comment 3: The IOUs oppose the exception that allows RENs and CCAs to perform both administration and implementation. They think that the purpose of outsourcing is to facilitate the benefits of competition, and the REN/CCA's governmental structure does not substitute for the actual benefits of competition.

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