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5-24-16
03:16 PM

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)

**RULING OF ASSIGNED COMMISSIONER AND ADMINISTRATIVE
LAW JUDGE SEEKING INPUT ON APPROACHES FOR
STATEWIDE AND THIRD-PARTY PROGRAMS**

1. Summary

This ruling seeks parties' input on several potential program delivery changes to the statewide and third-party offerings in the California Public Utilities Commission's (Commission) energy efficiency portfolios.

This ruling includes concepts designed, in part, to respond to the mandate in Senate Bill (SB) 350 (De León, 2015) requiring a doubling of statewide delivered energy efficiency savings in electricity and natural gas end uses of California retail customers by 2030.

These topics were the subject of earlier workshops on March 23, and 24, 2015, and an initial set of comments by some parties filed on or before April 13, 2015, in response to an Administrative Law Judge ruling issued April 1, 2015. In response to the workshops and comments, we have developed proposals for potential approaches to addressing both statewide and third-party program requirements. Those proposals are presented in this ruling.

In the meantime, as we were developing these proposals, we also became aware that these topics and some party proposals to address them have been discussed in initial meetings of the California Energy Efficiency Coordinating Committee (CAEECC), authorized by Decision (D.) 15-10-028. We seek input on, among other things, whether additional guidance from the Commission would be helpful or desirable in advance of the submission of energy efficiency business plans by program administrators, as also contemplated in D.15-10-028.

Written comments in response to this ruling are requested by no later than June 10, 2016, with reply comments permitted by no later than June 20, 2016. The specific questions parties are asked to address are outlined in Section 3 of this ruling.

2. Proposal

In the section below, we present several conceptual proposals for how to address statewide and third-party programs within our energy efficiency portfolios. We present some ideas and variations, and seek input on whether to implement some or all aspects of the proposal presented below.

2.1 Statewide Programs Proposal

Definition

Under current Commission direction, utility administrators are required to deliver twelve categories of so-called “statewide programs” which are uniform, similar, or coordinated in some fashion, depending on the specific program area, across the four large investor-owned utility (IOU) territories. The current “statewide” categories vary between designation by sector, end use, and/or delivery strategy. Based on discussion at the 2015 workshops on this subject, currently there does not appear to be one consistent definition or approach for statewide programs.

For the sake of clarity, in this ruling we propose a new, more specific definition of “statewide” as follows:

Statewide means: A program that is designed to be delivered uniformly throughout the four large Investor-Owned Utility service territories by a single lead program implementer under contract to a single lead program administrator. Local or regional variations in incentive levels or measure eligibility are not generally permissible (except possibly for measures that are weather dependent) and the customer interface/experience should be identical regardless of geographic location. Statewide efforts are generally targeted upstream (at the manufacturer level) or midstream (at the distributor or retailer level), though they may include downstream approaches in some markets. They are also mainly designed to achieve market transformation and/or aimed at delivering new construction and cross-cutting (cross-sector) programs.

This definition is designed to emphasize the desirability of making programs easy to access and with low transaction costs for customers or market actors that have a statewide reach and whose operations do not vary significantly geographically within California. It may also support streamlined access to market trend data, if defined as part of the program, to understand the effects of such an intervention statewide. These programs would engage, but not necessarily be limited to, manufacturers of appliances, home builders, big box retailers, chain restaurants, chain hotels, grocery stores, and other customers of a similar nature where a statewide program would allow interaction with an energy efficiency program regardless of geography. Finally, we would also expect this approach to reduce portfolio overhead costs by eliminating redundant capacity associated with each utility implementing similar programs in each of their service territories.

Ideally, we would like to see programs that are truly statewide and include the same offerings even within the territories of publicly-owned utilities, though we acknowledge that the Commission does not have authority to require this. Over the long term, however, it may be possible to collaborate with the California Energy Commission (CEC) and the municipal utilities to work towards this goal.

Statewide programs ideally would be designed to have long-term strategies and could also pursue market transformation over a period of at least five to ten years, to allow for continuity in program delivery and planned evolution during the life of the program, including data needs to track progress.

Subprograms proposed to be designated as Statewide

With the above definition in mind, we propose the following “subprograms” of the “statewide” categories under the prior definition be treated as statewide, according to the definition above.

We also seek comment on whether it would make sense to designate a small subset of these programs to be implemented under the updated statewide definition and structure beginning in 2017, while transitioning a new tranche of programs to be treated as statewide each year after 2017 for several years in a row, until each of the chosen programs is delivered statewide by a single implementer.

The subprograms listed below, under the twelve categories previously considered to be statewide, are possible candidates for statewide treatment under the new definition. We seek comment on whether or not each of these categories may or may not be appropriate.

Residential program candidates

- Plug Load and Appliances
- Multifamily Energy Efficiency Rebates
- Residential New Construction
- California Advanced Homes Program
- Zero Net Energy Program

Commercial program candidates

- Savings By Design
- Deemed Incentives
- Calculated Incentives (program interface and approach, if not the incentives themselves¹)

Industrial program candidates

- Deemed Incentives
- Calculated Incentives (program interface and approach, if not the incentives themselves)

Agricultural program candidates

- Deemed Incentives
- Calculated Incentives (program interface and approach, if not the incentives themselves)

Financing program candidates

- On Bill Financing (program rules and terms, if not the details of utility-specific billing and payment tariff details)
- New Finance Offerings

Lighting program candidates

- Primary Lighting
- High Quality LEDs (within primary lighting)

¹ Note that due to the Assembly Bill 802 requirements for determining savings calculations and baselines, some of these program names or concepts are likely to change.

Heating Ventilation and Air Conditioning
Program Candidates

- Residential Upstream
- Commercial Upstream

Emerging Technologies program candidates

- Technology Development Support
- Technology Assessments
- Technology Introduction

Codes and Standards program candidates

- Building Codes Advocacy
- Appliance Standards Advocacy
- Compliance Improvement
- Planning and Coordination

Integrated Demand Side Management program candidates

- Integrated Emerging Technologies
- Integrated Pilots, Programs, and Activities

Workforce Education and Training program candidates

- Connections
- Strategic Planning

Marketing, Education, and Outreach program candidates

- Energy Upgrade California campaign

Responsibility for Administration

In comments filed April 13, 2015, and amended May 7, 2015, Pacific Gas and Electric Company (PG&E) identified the IOU lead administrators for each of the pre-existing “statewide” program areas. They are as follows:

Program Area	IOU Lead
Residential	San Diego Gas & Electric (SDG&E)
Commercial	Pacific Gas and Electric Company (PG&E)
Industrial	Southern California Gas Company (SoCalGas)
Agricultural	SoCalGas
Lighting	Southern California Edison (SCE)
Codes and Standards	PG&E
Emerging Technologies	SCE
Integrated Demand Side Management	SCE
Workforce Education and Training	PG&E
Financing	SoCalGas - In coordination with the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA)
Marketing, Education, and Outreach (ME&O)	PG&E - In coordination with the Center for Sustainable Energy (CSE)

We propose, as a starting point, that the same IOU leads should retain responsibility for administration of the program areas above identified for statewide implementation by a single implementer. We propose that each IOU lead be required to solicit proposals from implementers under a solicitation protocol to be proposed in this or a subsequent relevant docket as part of the energy efficiency business plan filings, and approved by the Commission. The protocol would also be vetted through the stakeholder process adopted by the decision on the rolling portfolio process (D.15-10-028).

Once the solicitation protocol is approved by the Commission and the solicitation completed, one implementer would then be selected by each IOU lead administrator to serve the market in all IOU territories, for each of the subprograms listed above. As suggested above, it may make sense to phase in this process over a period of several years.

There would be two exceptions to this solicitation requirement, for the New Finance Offerings and Marketing, Education, and Outreach program areas, since both are being handled in separate tracks, either of this proceeding or of Application (A.) 12-08-007, respectively, and each already has a statewide non-utility administrator (currently CAEATFA and CSE, respectively).

We further propose that program costs for the statewide program should be shared among all four gas and electric IOUs, or three single-fuel IOUs, as applicable, on a pre-set budget basis determined up front and not dependent on the ultimate program uptake or customer participation in each IOU's particular service territory. Cost sharing would be trued up by the Commission periodically (not less than once every five years) on a going forward basis, based on actual historical customer participation by geography.

The utility program administrators, in particular, should comment on whether the current lead IOU division of labor would be fair and workable under this new framework, or whether lead responsibility should be shifted for any program areas. The utilities are specifically requested to comment on this issue in their responses to this proposal. Other parties may comment as well. Parties are also requested to comment on the appropriate pre-set budget basis and true-up mechanism concept.

In addition, under the solicitation protocols developed by the utility leads, we propose that implementers bidding for delivery of each statewide program or subprogram should be permitted to propose delivery strategies or program elements that may go beyond current program designs and delivery strategies. In addition, under this proposal, implementers should be permitted and encouraged to hire subcontractors that may have local or regional specialties or expertise in particular markets.

Finally, we propose that implementation contracts signed with the selected implementers by the lead IOU should prioritize pay-for performance, to be further designed and detailed in the solicitation documents by the lead IOU for each program area. This is in keeping with the requirements of SB 350 addressing requirements for the Commission to authorize pay-for-performance programs.

2.2 Third-Party Proposal

Background

Based on the discussion at the workshops in March 2015 and subsequent comments, it appears as though there is currently no meaningful distinction between the 20 percent of the current IOU portfolios that are currently required to be designated as “third-party” and the utility core programs that happen to be implemented or delivered by third-parties under contract to utilities.

In addition, so-called “third-party” programs seem to be generally used and circumscribed by IOU administrators to fill gaps. Essentially this means that any opportunity for third-party programs to drive innovation, and for successful innovative programs to then scale up (both of which were part of the Commission’s original rationale for the 20 percent requirements), is either extremely limited or possibly nonexistent.

It also seems quite challenging, however, for the IOU program administrators to ensure that all of our many competing objectives are met, including comprehensiveness, equity, cost-effectiveness, and innovation opportunities, among others. In the face of all of these competing objectives, it is difficult to see how the IOU administrators can divide up their core programs from “third-party” programs in advance and not create gaps and overlaps, especially as programs and delivery strategies evolve over time.

Definition

We propose the following definition of “third-party” programs. Going forward, to be designated as “third-party,” the program must be proposed, designed, implemented, and delivered by non-utility personnel under contract to a utility program administrator.

The rationale for this proposal includes the following objectives: innovation, effectiveness, cost reduction, and/or better cost-effectiveness.

Inherent in this definition is the expectation that the utility administrators would take on more of an oversight role, including selecting bidders based on objectives and value, designing procurement and sourcing mechanisms more uniformly, and taking on a greater role in oversight and verification rather than program delivery. Utility administrators would also be in close communication with Commission staff in their own oversight capacity. We would also expect that the utilities would take on more of a role in the identification and dissemination of best practices on program design, marketing, and delivery, for use in assisting and guiding bidders and evolving program delivery strategies over time.

Options

Given the challenges described above, we suggest that there are two near-term options for moving forward with “third-party” requirements. We propose these options with the express purpose of soliciting feedback and comment from parties about the pros and cons of these approaches, and also solicit party input on additional alternative proposals for how to address third-party participation in all aspects of program delivery.

Option 1

Under this option, the Commission would eliminate the 20 percent third-party requirement that is currently in place for the IOU administrators. IOUs would then be allowed to choose freely how to allocate program delivery responsibilities between utility personnel and third-parties. Under this option, the Innovative Design for Energy Efficiency Activities 365 program would likely become the first vehicle for new or innovative program strategies to be brought forward. Other program vehicles could also be prepared. This may warrant an expansion both in terms of budget for this program and in frequency of solicitation opportunities.

Option 2

Under this option, the Commission would require that all program delivery for the commercial sector, not only for statewide programs, as described in Section 2.1 above, but also for local and regional programs, be handled by third-parties. The commercial sector would be handled 100 percent by third-party implementers beginning sometime in 2017. Another variation on this idea would be to phase in third-party delivery of commercial programs over time, perhaps between 2017 and 2020. In general, this approach to transitioning to third-party delivery would allow the IOU administrators to maintain some portfolio design role, while utilizing the most efficient delivery mechanisms possible, and based on competitive bidding for cost efficiency.

Briefly, the rationale for designation of the commercial sector in this option includes its relative homogeneity across geography, commonality of building systems and equipment, relative concentration of ownership, and potential for economies of scale (and therefore cost savings). These criteria may also suggest the designation could or should be narrowed to the large commercial sector,

leaving small commercial businesses to be served in the current manner during the next few years while this option for large commercial customers is explored.

The IOUs would be permitted, in their sector business plans, to propose to continue a program delivery role in particular circumstances, with justification. Even with such explicit justification, the rebuttable presumption would be that all programs in the commercial sector should be delivered by third-parties unless there is a compelling reason presented by the IOUs to reject that approach. The Commission would need to approve of any exceptions to third-party delivery in the commercial sector.

2.3 Timeframe for Implementation

If the above proposals were to be implemented as described or in some variation, we would anticipate the following steps:

- In Fall 2016, Sector Business Plans are due to be submitted, according to D.15-10-028. These would be required to include the designation of components that will be issued for statewide implementer solicitation, as well as third-party solicitation, along with the bid solicitation protocols.
- Solicitations would be conducted in early 2017 after Commission approval of the Sector Business Plans and solicitation approach.
- Award of bids and program delivery would commence in the middle of 2017.
- There would also need to be arrangements for transition from current programs, with existing program rules applied to projects that were already active when the new programs commenced.

3. Questions for Parties

In response to this ruling, parties are invited to comment on any and all aspects of the proposals in this ruling, to comment on proposals under

discussion as part of the CAEECC deliberations, or to propose options of their own to address the statewide and third-party aspects of the program portfolios. In addition, we request that parties respond to the following specific questions to assist the Commission in giving additional guidance in the areas of statewide and third-party programs:

Questions related to overall regulatory framework for statewide and third-party programs

1. Should the Commission give additional guidance beyond the broad outlines in D.15-10-028 for the Rolling Portfolio Cycles and Sector Business Plans to the program administrators in the areas of statewide and third-party programs prior to submission of the Sector Business Plans in late 2016? Or would it be preferable to have the Commission wait to evaluate proposals brought forward in the Business Plans by the program administrators? Explain in detail the rationale for your preferred approach.
2. If you prefer the Commission to give guidance prior to the submission of Business Plans, what level of guidance should be given? Explain in detail.
3. How should any Commission requirements for statewide and/or third-party approaches apply to non-utility program administrators (e.g., community choice aggregators (CCAs), CAEATFA, the Regional Energy Networks (RENs), CSE, etc.)?
4. What type of showing should the Commission require for any Business Plan proposal that addresses statewide and/or third-party approaches? (e.g., rationale, program logic model, relationship to other parts of the portfolio, definition of designer/implementer/evaluator, proportion of the budget, bid solicitation protocols, etc.). Describe in detail.

5. Are there aspects of the current statewide programs approach that are effective and should be continued? Explain.

6. Are there aspects of the current third-party programs approach that are effective and should be continued? Explain.

7. How should the Senate Bill 350 requirements for market transformation programs and pay-for-performance programs factor in to our policies for statewide and third-party programs?

Questions related to the proposals/options outlined in this ruling

Statewide Programs

8. Is the general outline of the proposal in this ruling for statewide programs workable? Why or why not? Explain.

9. Do you agree with the proposed definition of “statewide” given in this ruling? Why or why not?

10. Are there specific actions that should be taken to collaborate with the California Energy Commission (regarding its Existing Buildings Energy Efficiency Action Plan) and/or with the publicly-owned utilities to further advance the idea of truly statewide programs?

11. Should the current IOU lead administrators for the statewide program areas remain the same or be changed?

12. How should community choice aggregator and regional energy network areas be handled, and what should be the role of those entities with respect to interactions with statewide programs?

13. Are there programs, subprograms, or other functions that should be added or removed from the list of statewide programs to be assigned for non-utility competitively-bid implementation contracts? Be specific and provide your rationale.

14. Should the treatment of programs and subprograms as statewide be phased in? Why or why not? If yes, which subprograms should we start with and over what period of time should others be phased in?

15. Do you agree with the proposal contained in this ruling with respect to budget sharing for statewide programs? Why or why not?

16. Should there be any guidelines or limitations on the extent to which non-lead administrators (including other utilities, CCAs, or Regional Energy Networks) could incur expenses to coordinate, monitor, and/or otherwise engage with statewide programs?

17. Do you agree with the idea of encouraging pay for performance elements in the contracts for selected statewide program implementers? Why or why not?

Third-Party Programs

18. Do you agree with the definition of “third-party” in this ruling? Why or why not?

19. Is the general outline of the proposal in this ruling for third-party programs workable? Why or why not? Explain.

20. Which third-party option (Option 1 or Option 2) do you prefer and why? Or would you prefer a different option entirely? If so, describe your preferred approach.

21. If you prefer Option 1 for third-party approaches, are there criteria that administrators should use for determining eligible program targets, sizes or budgets, or should this be determined in the course of formulating the Sector Business Plans?

22. If you prefer Option 2 for third-party approaches, would you limit the initial focus to the large commercial sector? Why or why not? Or suggest a different focus and rationale for it.

General Questions

23. Is the sector business plan process, with utility, program administrator, and stakeholder collaboration, sufficient to inform the development of program designs and solicitation documents for the proposals herein?

24. Are there any other elements or guidance needed from the Commission to ensure that high quality, high-value programs can be effectively implemented across the IOU service areas?

25. Are there other criteria the Commission should use in determining which programs should be required to be competitively bid (e.g., because the IOU cost-effectiveness showings have dropped below a certain threshold, etc.)?

26. How might the CEC's statewide benchmarking and disclosure regulations and program activities for commercial and multi-family buildings be reflected in the statewide and third-party program approaches?

27. If you suggest that some or all of the proposals in this ruling be implemented, what is the appropriate timeframe and transition process (if any), and why?

28. If you have alternative proposals for statewide and third-party aspects of the energy efficiency program portfolios, please describe them in detail.

IT IS RULED that:

1. Parties wishing to comment on the any and all aspects of the proposals discussed in this ruling, proposals under discussion as part of the California Energy Efficiency Coordinating Committee deliberations, or their own alternative proposals to address statewide and/or third-party programs as part of the energy efficiency program portfolios, including the specific questions in Section 3 of this ruling, shall file and serve comments by no later than June 10, 2016.

2. Parties shall file and serve reply comments by no later than June 20, 2016.

Dated May 24, 2016, at San Francisco, California.

/s/ CARLA J. PETERMAN

Carla J. Peterman
Assigned Commissioner

/s/ ANNE E. SIMON for

Julie A. Fitch
Administrative Law Judge