BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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| Order Instituting Rulemaking to Concerning Energy Efficiency Rolling Portfolios, Policies, Programs, Evaluation, and Related Issues. | Rulemaking 13-11-005 |

# COMMENTS OF THE PUBLIC ADVOCATES OFFICE ON ADMINISTRATIVE LAW JUDGE'S RULING SEEKING COMMENT ON MARKET TRANSFORMATION STAFF PROPOSAL

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## I. INTRODUCTION

The Public Advocates Office at the California Public Utilities Commission, formerly the Office of Ratepayer Advocates,[1] respectfully submits these comments on the *Administrative Law Judge's Ruling Seeking Comment on Market Transformation Staff Proposal* (Ruling), issued on August 29, 2018. The Ruling seeks parties' comments on a Staff Proposal for Energy Efficiency Market Transformation (Staff Proposal), which was included as Attachment A to the ruling.

Market transformation is an important issue with respect to Energy Efficiency (EE) and has a substantial history at the Commission. The Public Advocates Office appreciates the effort put forward by the Energy Division in developing its proposed framework as a starting point for stakeholder discussion and deliberation.

In the discussion below, the Public Advocates Office makes the following recommendations regarding the Staff Proposal:

- A market transformation framework should provide a process for the identification, screening, and selection of technologies that will feed into market transformation initiatives.
- A market transformation framework should include a pathway for successful initiatives to move directly into codes and standards advocacy.
- A market transformation framework should address how market transformation will coordinate with the utilities' resource acquisition and non-resource portfolios.
- The Staff Proposal to require that Market Transformation Initiatives meet a 1.50 Total Cost Resource test (TRC) threshold is prudent and should be retained.
- The Staff Proposal should be modified to provide greater emphasis on identifying and addressing market barriers as a core

[1] The Office of Ratepayer Advocates was renamed the Public Advocates Office of the Public Utilities Commission pursuant to Senate Bill No. 854, which was signed by the Governor on June 27, 2018 (Chapter 51, Statutes of 2018).

component of market transformation programs and a key means of ascertaining program influence.

- There is no need to provide utility program administrators performance incentives for performing market transformation.
- The Staff Proposal to allocate $12 million to each utility to spend on Market Transformation Initiatives lacks detail and justification.

## II. DISCUSSION

### A. A market transformation framework should provide a process for the identification, screening and selection of technologies that will feed into market transformation initiatives.

The Staff Proposal contains a two-stage process for developing Market Transformation Initiatives.[2] The first stage involves program administrators (PAs) proposing one or two "Market Transformation Development Plans" to the Commission in the form of Tier 1 advice letters.[3] As an option PAs may share ideas with stakeholders and receive feedback before submitting the advice letter. The second stage involves development of a "Market Transformation Accord" for those ideas that show promise after the development stage, which will be submitted for approval as a Tier III advice letter.[4]

The Staff Proposal lacks specificity regarding how the PAs would select which technologies or practices to propose in development plans or on what basis PAs would make this selection.

The two-stage process described in the Staff Proposal can be contrasted with the process described by the Northwest Energy Efficiency Alliance (NEEA) at the September

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[2] See Staff Proposal, Section 3.2. p.18 (page numbers are not provided in the original and refer to the PDF page numbers).

[3] See Staff Proposal, Section 5, p. 28.

[4] See Staff Proposal, Sections 5 (Step 3&4), pp. 28-29.

25th workshop. NEEA described its seven-stage market transformation, marked by multiple 'stage-gates.'[5] NEEA's process begins with stages for *activity scanning, concept opportunity assessment,* and *field validation. Activity scanning* involves the search for new ideas and early testing to ensure that technologies can deliver efficiency under field conditions. Promising ideas then go through the *concept development stage,* after which NEEA staff presents them to an advisory committee that determines whether they will go forward or not. Finally, those ideas that do go forward undergo extensive *field validation* before reaching the "initiative development" stage proposed in the Staff Proposal. NEEA budgets substantially for these early stage activities such as scanning and testing technologies, and makes the technologies pass several stage-gates before designing a market transformation program to push them through the broader market.

The Commission should develop a process for the identification, screening and selection of technologies for market transformation programs. The Commission need not adopt NEEA's exact approach to scanning and screening technologies for selection into market transformation programs. Other approaches that accomplish similar objectives may be more appropriate. However, in order to be successful any market transformation framework adopted by the Commission should include a detailed process for selecting the most promising technologies.

### B. A market transformation framework should include a pathway for successful initiatives to move directly into codes and standards advocacy.

The two-stage proposal put forward in the Staff Proposal does not address how successful Market Transformation Initiatives will feed into code and standards (C&S) advocacy. Adoption of a stringent energy efficiency code or voluntary standard immediately improves energy efficiency across the entire market. For most Market Transformation Initiatives, adoption into mandatory codes or standards, or voluntary

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[5] "Stage-gates" are an approval process that determines whether a market transformation idea will be passed to the next stage, where further and often larger investments are made, or be terminated.

standards such as EnergySTAR, is the end-point of the market transformation process.[6] At the September 25th workshop organized by Energy Division, NEEA discussed how information regarding sales and market acceptance that it gains through Market Transformation Initiatives may be used to successfully accelerate code adoption. Facilitating and accelerating code adoption are among the primary objectives of Market Transformation Initiatives.

To ensure that Market Transformation Initiatives are effective in promoting accelerated adoption of energy efficiency of codes and standards, the Commission should require that Market Transformation Initiatives coordinate closely with C&S advocacy activities, including requiring a plan for information sharing. The Commission should also clarify attribution of savings from C&S adoption between the Market Transformation Initiative and the C&S advocacy program. Without a clear attribution of savings, Market Transformation Initiatives may create a perverse incentive for the utilities to withhold information from C&S advocacy in order to extend a program's duration and record savings for that program activity.

### C. A successful market transformation framework should address how market transformation will coordinate with the utilities' resource acquisition and non-resource portfolios.

Decision (D.) 16-08-019 requires the utility PAs to outsource at least 60 percent of their energy efficiency portfolios to third-parties by 2020.[7] D.16-08-019 further specifies that to be designated as a third party, "the program must be proposed, designed and implemented, and delivered by non-utility personnel under contract to a utility program administrator."[8] The new third-party requirements represented a shift in Commission

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[6] Codes and Standards apply mostly to technology. The endpoint of a Market Transformation Initiative aimed at transforming a practice, such as maintenance, is unlikely to result in a code.

[7] D.16-08-018, Order 12, p.111. The deadline for achieving the 60 percent threshold was subsequently modified to December 31, 2022 by Decision (D.)18-01-004, Order 1c, p. 51.

[8] D. 16-08-018, Order 10, p. 111.

policy towards a more market-based approach in which implementers have the key role in designing and proposing energy efficiency programs.

The Staff Proposal recommends that "Market Transformation Accords" contain "Resource Program Coordination Plans" in order to address many of the potential conflicts and synergies between Market Transformation Initiatives and resource acquisition programs.[9] However, the proposed coordination may require adjustments in the design and implementation of existing resource programs that are bid by third-parties and fall under Commission third-party program rules. Such an eventuality would create substantial complications and could require substantial contract renegotiations with the third-party in order for the third-party program to accommodate a particular Market Transformation Initiative. In addition, substantial program changes could undermine a program's status as a third-party program since the utility would be directing the program's design in order to fit the Market Transformation Initiative. Once the utilities establish a Market Transformation Initiative, utility requests for proposals (RFPs) may include provisions to ensure complementarity or simply avoid conflict between market transformation programs and the bidding programs. However, it is unclear in the Staff Proposal how Energy Division proposes to deal with conflicts arising with resource programs that already have been bid by third-parties and are under contract only to find that the utilities have developed a market transformation program that overlaps with the third-party programs.

### D. Energy Division's proposal that market transformation initiatives be required to meet a 1.50 Total Resource Cost threshold is prudent and should be retained.

Energy Division's proposal that Market Transformation Initiatives be required to meet a 1.50 Total Resource Cost (TRC) lifetime benefits-to-cost ratio is prudent and should be retained. In order for the Commission's market transformation efforts to be

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[9] See Staff Proposal, pp. 24-25.

cost-effective over-all, the gains from successful initiatives will have to offset the losses from exploring early stage ideas that don't pan out and from fully developed Market Transformation Initiatives that terminate before they become cost-effective. Setting a threshold at 1.50 will focus PAs on only proposing those ideas that can 'win big' and thus pay for those programs that don't succeed. Conversely, a lower cost-effectiveness threshold is likely to produce a market-transformation portfolio that is not cost-effective overall.

### E. The Staff Proposal should be modified to provide greater emphasis on identifying and addressing market barriers as a core component of market transformation programs and a key means of ascertaining program influence.

The Energy Division proposes that market transformation accords should include a cost-effectiveness schedule[10] that defines pre-determined "cost effectiveness milestones" and that show the Market Transformation Initiative is on-track to achieve anticipated energy savings. While achieving cost-effective energy savings should be the ultimate goal of any Market Transformation Initiative, progress towards this goal may be uneven. It is to predict with certainty when markets will take-off and initiatives will meet sales, energy savings, or cost-effectiveness milestones. Data on market barriers is likely to develop well in advance of significant changes in sales or energy savings and provides a different lens on market development.

Furthermore, the fact that an initiative achieves a pre-determined cost-effectiveness goal tell us little about attribution – whether the Market Transformation Initiative had a causal role or market growth was purely the result of exogenous market forces. For this reason, evaluators need to test plausible causal mechanisms and related hypotheses to build a case for attribution. The starting point for program attribution in a market-transformation context is an analysis of market barriers and a Market Transformation Initiative's progress in addressing relevant market barriers. If an

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[10] Staff Proposal, Section 3.1.

initiative has met its energy savings or cost-effectiveness goals but has not successfully addressed the market barriers identified in the program theory, there is a strong case to be made that savings are not attributable to the Market Transformation Initiative. In the opposite case, progress towards addressing market barriers that is not matched by progress towards energy savings goals may indicate a need to revise the program theory to consider new barriers and correct course or to end the program.

While the Staff Proposal does discuss non-financial market barriers as an important reason for undertaking Market Transformation Initiatives, the Staff Proposal bases its proposed milestone-based performance incentives entirely on meeting cost-effectiveness milestones. This approach may increase the likelihood of false positives (the milestones are met, but not due to program activities) and false negatives (where the program is transforming the market, but savings have yet to materialize).

Systematic analysis, targeting, and elimination of market barriers should be the core of any Market Transformation Initiative. The Commission should adopt additional metrics and milestones to measure elimination of market barriers in order to determine Market Transformation Initiative progress and attribution with greater certainty.

### F. There is no need to provide utility PAs performance incentives for performing market transformation.

There has been no evidence that shareholder incentives for energy efficiency activities have substantially encouraged or promoted energy efficiency activities. The Staff Proposal includes incentives for utility PAs that would be earned based on achieving particular milestones. The stated purpose of the proposed incentives is to "ensure better alignment of interests and very clear goals."[11] Unfortunately, previous Commission efforts to provide incentives for energy efficiency activities have resulted in utility management focusing too sharply on the immediate goal of shorter-term energy savings. Staff's recommendation that energy savings and cost-effectiveness be used as a

[11] Staff Proposal, Section 3.3, pp. 24.

milestone also begs the question of attribution – whether the observed energy savings were the result of program activities or came about because of exogenous forces in the market and would have occurred anyhow. In the absence of consensus on the attribution issue, the awarding of incentives will be contentious. For this reason, financial incentives are unlikely to be effective in encouraging prudent utility PA management market transformation programs, and the Commission should not approve a proposal that contains a performance incentive.

### G. The Energy Division's proposal to allocate $12 million to each utility to spend on market transformation initiatives lacks detail and justification.

The Staff Proposal recommends allocating a maximum budget of $12 million to each PA to fund the initial tranche of market transformation initiatives.[12] Energy Division also "proposes that PA funding commitments to Market Transformation Initiatives be made explicit in the Market Transformation Accord and that they generally mirror the load-share of each PA."[13] Given that their funding commitments will be based on load-share, it is not clear why the proposal allocates an equal budget to each PA. It is also not clear from the Staff Proposal what the basis of the $12 million maximum is or whether that is sufficient, too high, or too low to meet the Commission's objectives in an initial tranche of Market Transformation Initiatives.

The Commission should not make a final determination of an appropriate budget until after a framework has been developed and adopted by the Commission. At that time, the scope of activities required to complete a Market Transformation Initiatives will be defined and an appropriate budget can be determined. The utilities should propose and justify their budgets for each Market Transformation Initiatives in the Market Transformation Accord Tier 3 advice letters.

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[12] Staff Proposal, p. 11.

[13] Ibid, p.18.

## III. CONCLUSION

The Public Advocates Office respectfully requests that the Commission adopt the recommendations contained herein.

Respectfully submitted,

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