BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Reform the Commission's Energy Efficiency Risk/Reward Incentive Mechanism.	Rulemaking 12-01-005 (Filed January 12, 2012)

COMMENTS OF THE MARIN ENERGY AUTHORITY ON THE ASSIGNED COMMISSIONER'S RULING REGARDING EFFICIENCY SAVINGS AND PERFORMANCE INCENTIVE DESIGN FOR ENERGY EFFICIENCY 2013-2014 PORTFOLIO

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I. Introduction

In accordance with the instructions set forth in the *Assigned Commissioner's Ruling Soliciting Comments Regarding Efficiency Savings and Performance Incentive Design for Energy Efficiency 2013 -2014 Portfolio* ("Ruling") filed on April 4, 2013, the Marin Energy Authority ("MEA") submits these comments.

MEA is the not -for-profit public agency that administers the MCE Clean Energy community choice aggregation program. MEA is the default electricity generation provider for the Co unty of Marin and the City of Richmond. Currently, MEA is the only operating Community Choice Aggregator ("CCA") in the state of California and the only utility that is not an investor-owned utility ("IOU") permitted by the Commission to administer Energy Efficiency ("EE") programs funded by the general rate -base. Only in the last year has the California Public Utilities Commission ("CPUC" or "Commission") granted MEA the authority to administer EE programs, thus there has been a lack of precedent on CCA in volvement in issues such as the Efficiency Savings and Performance Incentive ("ESPI") mechanism (formerly referred to as the "Risk Reward Incentive Mechanism" or "RRIM").

Per Decision ("D.") 12-11-015, MEA is an administrator of EE programs for the 2013-2014 EE program cycle. As such, MEA requests the Commission to amend the scope of this proceeding in order to determine how the ESPI mechanism would apply to the 2013-2014 EE programs run by CCAs.

II. The Commission Should Examine CCA Participation in the ESPI mechanism and Amend the Scope of the Current Proceeding

MEA requests the Commission examine the issue of CCA participation in the ESPI mechanism in a timely fashion, given that MEA has already launched its 2013-2014 EE programs within its service territory. The Commission could address CCA participation in the ESPI mechanism through its examination of the incentive issues for the 2013-2014 period, as outlined in the Scoping Memo issued on May 16, 2012. The subsequent Scoping Memo of August 22, 2012 indicated: "At this point, we define the scope for potential incentive reforms for 2013-2014 quite broadly." The treatment of incentives for CCAs is an important facet of incentive reform for the 2013-2014 period. Additionally, this determination should be made as soon as possible. This follows the Commission's stated priority goal to issue a proposed decision "to be in place with the beginning of program implementation." (May 16, 2012 Scoping Memo at 7.)

MEA requests that the scope of the proceeding is amended to include the following language: "*The examination of the incentive issues for the 2013 – 2014 period will include a determination of the methodology for CCA participation in the ESPI mechanism*."

III. MEA Administers Energy Efficiency Programs for All Ratepayers Within its Service Territory

Pursuant to the California Public Utilities ("P.U.") Code §381.1(a) -(d), in D.12 -11-015 MEA was authorized by the Commission to administer EE programs to all ratepayers within its service territory.

P.U. Code §381.1(a) mandates: (*Emphasis added.)*

> (a) No later than July 15, 2003, the commission shall establish policies and procedures by which any party, including, but not limited to, *a local entity that establishes a community choice aggregation program, may apply to become administrators for cost -effective energy efficiency and conservation programs established pursuant to Section 381*. In determining whether to approve an application to become administrators and subject to an aggregator's right to elect to become an administ rator pursuant to subdivision (f), the commission shall consider the value of program continuity and planning certainty and the value of allowing competitive opportunities for potentially new administrators. The commission shall weigh the benefits of the p arty's proposed program to ensure that the program meets the following objectives:
> (1) Is consistent with the goals of the existing programs established pursuant to Section 381.
> (2) Advances the public interest in maximizing cost -effective electricity savings and related benefits.
> (3) Accommodates the need for broader statewide or regional programs.

MEA has complied with these requirements and was authorized by the Commission in D. 12-11-015 to launch and administer its own EE programs for customer s within its service territory for the 2013 – 2014 period. These EE programs included pilots for single families, multi-family units, small commercial customers, and financing.

IV. MEA Is Eligible for Participation in the Efficiency Savings and Performance Incentive Mechanism.

A fundamental component of the ESPI mechanism as implemented in the past is performance-based awards of funds. Similar to the IOUS, the Commission should affirmatively indicate that MEA, as a CCA, is eligible for similar performance-based incentives based upon participation in a rigorous *ex ante* process and *ex post* evaluations verifying savings accomplished in MEA's EE programs to uniformly incentivize and reward program performance.

1. A Purpose of the ESPI Mechanism Is to Promote EE

According to D.12-12-032, an "incentive mechanism is a core part of the state's strategy to successfully deploy Energy Efficiency." (D.12-12-032 at 2.) Similarly, "the RRIM was originally designed to extend California's commitment to making EE the highest energy resource priority." (*Id.* at 7.) Therefore, at its most basic, in order to promote EE, the ESPI mechanism should apply to CCAs who are also Commission-approved administrators of EE programs.

MEA's mission statement indicates, "The purpose of the Marin Energy Authority is to address climate change by reducing energy related greenhouse gas emissions and securing energy supply, price stability, energy efficiencies and local economic and workforce benefits." Therefore, EE is one of the fundamental purposes of MEA's implementation of its CCA model.

In D.12-12-032, the Commission indicated that "any directives regarding incentive policy should be consistent with California's commitment to make EE the highest energy resource priority" and added that pursuant to "past Commission policy directives (California's Energy Action Plan), energy efficiency programs should be prioritized as the first resource to meet California's energy demand." (D.12-12-032, Conclusion of Law 1, at 47.) According to the 2008 Update of California's Energy Action Plan ("CEAP"), "the most important tool for addressing greenhouse gas emissions in the energy sector is energy efficiency." (CEAP 2008 Update at 6.) The CEAP also lists, "our three most powerful strategies for increase energy efficiency have been: building codes, appliance standards, and *utility energy efficiency programs*." (*Emphasis added*, California Energy Action Plan 2008 Update at 7.)

As discussed above, MEA is the utility and default electricity generation provider for the County of Marin and the City of Richmond. In accordance with the same policy directives the Commission used to authorize prior implementation of the Risk Reward Incentive Mechanism, MEA's EE programs represent one of the most powerful strategies for increasing energy efficiency. To exclude MEA from the ESPI mechanism would deprive the Commission of the opportunity to utilize ESPI funds in an innovative and groundbreaking fashion in order to further California's EE goals. Therefore, in furtherance of state and Commission policy directives explored above, MEA should be subject to the same ESPI mechanism as the IOUs.

2. To Exclude a CCA's EE Programs from the ESPI Mechanism Would Be Inequitable

If MEA were excluded from the ESPI mechanism, the Commission would contravene the legislature's intent to establish and promote competitive neutrality pursuant to Senate Bill ("SB") 790, which mandated that the Commission incorporate rules to foster fair competition for community choice aggregation programs. (P.U. Code §707(a)(4)(A).) For example, providing incentives to an IOU but not to a CCA would result in an unequal playing field. This would also indicate preferential treatment to IOUs and their shareholders—since CCAs by definition possess no shareholders.[1]

Additionally, according to §381.1(a) of the Public Utilities Code, by which MEA's 2013-2014 EE programs were approved, "the commission shall consider… the value of allowing competitive opportunities for potentially new administrators." To exclude MEA from

[1] CCAs are joint powers agencies formed by any group of cities and/or counties whose governing boards have elected to combine the loads of their programs. (P.U. Code § 331.1) MEA is the only operating CCA in California, and is a not-for-profit Joint Powers Authority formed by the County of Marin and the City of Richmond. MEA is governed by a Board of Directors comprised of elected officials from each service territory jurisdiction. This Board of Directors votes on all major decisions, including rate changes and EE program implementation.

participating in the ESPI mechanism would curb competitive opportunities for MEA, which has been approved as a new administrator of EE programs.

It is sound policy to enforce standards equally among competitors. By subjecting MEA's EE programs to the same standards as the IOUs' programs, the Commission will be better able to ensure that all EE programs adhere to the same standards. If EE programs are found to be effective, a CCA should be rewarded in the same manner as the IOUs. Thus, CCA participation in the ESPI mechanism also promotes uniform standards for EE programs and should be approved.

V. CCA Uses of ESPI Funds Will Further Programs for CCA Customers

As noted above, MEA is a not-for-profit public agency with no shareholders to receive any incentives resulting from the ESPI mechanism. Instead, incentives received from the ESPI mechanism would be directed back towards to the agency for uses to be determined by the publicly-elected MEA Board of Directors. Incentives could therefore be used for beneficial public programs such as: Supplementary EE programs for customers, increasing renewable energy resources, funding innovative pilot programs, and workforce development within MEA's service territory, among others.

VI. ESPI Funds Should Be Disbursed to CCAs Based On the Ex Ante Review Process Performance and the Ex Post Savings Achievement

When disbursing incentives through the ESPI mechanism to CCAs, the two applicable methodologies outlined in the Ruling are the Ex Ante Review ("EAR") Process and the Ex Post Savings Process (as MEA does not have non-resource or codes and standards programs included in its 2013 – 2014 Portfolio). While MEA would prefer to stay neutral regarding the methodology for disbursing incentives to the IOUs, three particular issues arise that impact decision making on disbursement:

1. **Does a management fee, paid as a fixed percentage of expenditures of non-resource programs, adequately incent utilities for successful implementation and investment in quality non-resource programs?**[2]

MEA endorses an approach of a flat management fee as a fixed percentage of the programs. However, MEA does not believe that this percentage should be tied to expenditures because spending is not an adequate metric of program success.

2. **In lieu of a management fee, should the Commission reward utilities for non-resource based programs using *specific* program performance metrics as a more appropriate measure of non-resource program performance?**[3]

MEA recommends that the incentive payments are tied to performance metrics. These performance metrics should be appropriate to the program type (for example, consumer impressions for marketing) and be selected by the Energy Division staff at the Commission with input from stakeholders.

3. **Should financing program funds be removed from the ex post savings achievement?**

MEA recommends excluding financing programs in calculations for ex post incentive payments for the 2013 – 2014 portfolio since these programs are ground-breaking pilots and not yet ripe for evaluation under the ESPI process. While the Commission has recommended that financing programs be treated as resource programs, the methodology for quantifying the TRC of these programs has not been determined and they currently have an inflated impact on the overall TRC, and therefore, any ultimate calculation of incentives.

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[2] This is the Question 2 Commissioner Ferron requested that parties address in the Ruling.
[3] This is the Question 3 Commissioner Ferron requested that parties address in the Ruling.

Instead, these financing programs should be included in any assessment of management fees for the Codes and Standards Program Implementation. MEA is presently the only utility in the state that has offered an E3 analysis to accomp any a financing program . In this and other ways, MEA is serving as a leader to develop and implement innovative approaches to incorporating third party financing into the EE portfolio. Indeed, when approving the MEA financing pilot, the Commission noted: "The MEA financing on -bill repayment pilot program should be piloted because it provides a unique ability to test this mechanism and its acceptance by customers." (D.12 -11-015, Conclusion of Law 42, at 122.) The innovation and effort that MEA has put into these pilot programs is most appropriately treated under the flat management fee approach suggested for the codes and standards programs, and should be reflected in the ESPI mechanism.

VII. Conclusion

MEA respectfully requests that the Commission expressly aut horizes MEA's participation in the ESPI mechanism, starting with its 2013 -2014 EE programs. MEA thanks the Commission, Assigned Commissioner Ferron and Assigned Administrative Law Judge Pulsifer for their consideration of the comments set forth herein.

Respectfully submitted,

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