

**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 PROPOSED
DECISION ADOPTING EFFICIENCY SAVINGS AND PERFORMANCE INCENTIVE
MECHANISM**

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SUMMARY OF RECOMMENDATIONS

1. Community Choice Aggregators (CCAs) should be included in the ESPI mechanism and subject to the same evaluation measures as the IOUs.

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I. Introduction.

Pursuant to Rule 14.3 of the California Public Utilities Commission’s (“ Commission’s”) Rules of Practice and Procedure, the Marin Energy Authority (“MEA”) hereby submits these opening comments on Administrative Law Judge (“ALJ”) Pulsifer’s *Proposed Decision* (“PD”) *Adopting Efficiency Savings and Performance Incentive Mechanism* . The proposed decision was issued on July 26, 2013; therefore, these comments are timely filed.

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 approximately 120,000 customers in the County 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 MEA exercised its statutory right to administer EE programs.¹ Because MEA is the first CCA in California and the first CCA to operate EE programs, there is a lack of precedent on CCA involvement in issues such as the Efficiency Savings and Performance Incentive (“ESPI”)

¹ Public Utilities Code § 381.1 subsections (a-f). MEA’s programs were approved by the Commission in resolution E-4815 and in Decision 12-11-015.

mechanism (formerly referred to as the “Risk Reward Incentive Mechanism” or “RRIM”). The Proposed Decision sets a troubling precedent to exclude CCAs, which are local government entities, from receiving monetary incentives that are routinely given to IOUs. This exclusion is contrary to California statute, discriminatory, and unfair. The Proposed Decision establishes a precedent that CCA entities are not eligible for the same reward for exemplary performance on a portfolio as shareholders of a corporation, and bases this judgment on faulty reasoning.

II. The Proposal of MEA Seeking to Become a Recipient of ESPI Awards is Within the Scope of this Proceeding.

MEA’s inclusion in the ESPI mechanism is clearly within the scope of the proceeding. Although the inclusion of the issue would make the proceeding more complex than at present, the desire to fast-track the ESPI awards for IOUs should not come at the expense of ratepayers. This proceeding is currently the only designated proceeding examining the ESPI mechanism. Therefore, unless the Commission deems it necessary to institute a new rulemaking to examine the issue, the instant proceeding is the most appropriate venue to ascertain the parameters for including CCAs in the ESPI mechanism.

Today, the Commission voted to approve Decision 13-08-xxx, which denies a petition made by MEA to address cost allocation issues. The newly-approved decision indicates, “The Commission remains committed to ensuring that Community Choice Aggregators and other non-utility LSEs may compete on a fair and equal basis with regulated utilities.”²² Competing on a fair and equal basis is the fundamental purpose of MEA’s comments in the instant proceeding. By excluding CCAs from the ESPI mechanism, the Commission both institutes and perpetuates a scheme that favors the IOUs at the expense of community choice.

²² Petition 12-12-010, Proposed Decision at 17.

This is contrary to 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.³

III. The Proposed Decision Justifies Unequal Treatment Because MEA Is a Non-Profit Organization.

MEA’s 2013-2014 EE programs have been authorized by the Commission pursuant to the 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.

The PD reasons:

As noted in the Energy Action Plan and past Commission decisions, there is an inherent utility bias towards supply-side procurement under cost-of-service regulation. IOUs generate earnings when they invest in supply-side resources, but not when promoting EE to reduce load demand. To address this disparity inherent in the different approaches to addressing energy load requirements, an incentive mechanism continues to offer an important tool to augment Commission policy goals.⁴

This reasoning also applies to CCAs. MEA also generates earnings when investing in supply-side resources, but not when promoting EE to reduce load demand. Regarding motivation for EE programs, the only difference between a CCA and an IOU is that the Commission assumes that the CCA is solely altruistic and that the IOU is driven solely by profits. This logic is flawed for a number of reasons.

First, by excluding CCAs from the ESPI mechanism, the Commission assumes that the CCA business model operates solely out of altruism without consideration of fundamental business principles. Although MEA is motivated by its mission statement to secure energy

³ California Public Utilities Code (“P.U. Code”) §707(a)(4)(A).

⁴ PD at 12.

efficiencies, that mission is constrained by its need to maintain competitive rates in an evolving competitive generation market.⁵

In some ways, a CCA must behave in a more commercial manner than an IOU. For example, CCAs do not enjoy any “monopoly” status in the communities they serve, unlike the IOUs. Additionally, CCAs are not guaranteed any rate of return on their investments. CCAs need to make difficult business decisions when determining how much funding to allocate to non-revenue generating aspects of the organization. Therefore, incentives are useful for the purpose outlined by the Commission in its PD, to provide “a meaningful earnings opportunity on investing in EE rather than supply side resources.”⁶

Second, a CCA’s “shareholders” are, in fact, its constituent customers. As local government entities, CCAs answer to their communities for their services. By failing to distribute incentive funds to CCAs, the Commission effectively robs those constituents of the opportunities that could be derived from incentive funds that can be utilized for various purposes discussed below.

Third, the employment of an ESPI mechanism for CCAs establishes consistent measurement and incentives throughout IOU and CCA EE programs. In this way, CCAs, like the IOUs, are motivated by more than “doing a good job” or “doing the right thing” and are measured and evaluated similarly to the IOUs for a consistent approach.

⁵ For example, pending legislation, SB 43, establishes a shared renewables option for IOU customers. This option has already been cited as an alternative to CCA formation in San Francisco by the President of its Public Utilities Commission. It is likely that as the competitive generation market evolves, the CCA business model will be exposed to increasing business pressures.

⁶ PD at 11.

Fourth, although MEA is a green CCA focusing on clean energy delivery and efficiency, a CCA is not required to do so. By excluding CCAs from the ESPI mechanism, the Commission overlooks potential CCAs without a green mission.

Therefore, the Commission has committed both a factual and legal error and should establish the eligibility of CCAs to participate in the ESPI mechanism and determine the protocols necessary for implementation. To approve the PD as written penalizes CCAs for their inherent not-for-profit structure and rewards IOUs on an inequitable basis.

IV. MEA Knows of No Reasonable Equivalent for Incentive Funds.

A. MEA's Primary Uses of ESPI Funds Cannot Be Replicated Through a Disbursal of Additional Funds Requiring Commission Oversight, Such As Those Awarded in for EE Programs in D.12-05-015.

MEA cannot ascertain a reasonable equivalent for an award of ESPI funds. MEA only receives funds from the Commission pursuant to its EE applications; these funds are subject to rigorous cost-effectiveness tests which limit the ability to use these funds in developing programmatic infrastructure and other necessary capital investments to improve EE program delivery. These funds could also be used for beneficial but non-savings generated program activities. As MEA is restricted to keep its portfolio focused on "hard to reach" sectors and gaps in existing program delivery, it is difficult to achieve the cost effectiveness thresholds that are established by the Commission. Therefore, any spending activity that is not associated with achieving savings is disadvantaged in portfolio design. As such, there are uses for extra funds that are simply not appropriate in that instance.

For example, MEA could use ESPI funds to conduct a comprehensive outreach campaign in its service territory. With ESPI funds, MEA could engage in a door to door outreach campaign or coordinate community contests among schools and neighborhoods to encourage conservation.

Additionally, with ESPI funds, MEA could create a robust customer rebate program. MEA could also pursue demand response pilots or pilot programs based on Home Area Network technology. MEA might also be able to fund feasibility studies for local municipalities who are interested in joining MEA, such as the City of Richmond, who went through this process in 2012. Finally, given MEA's focus on customer data privacy, funds could be utilized in order to enhance security evaluations. The possibilities for the use of these funds are almost limitless.

B. If the Commission Decides to Award ESPI -Equivalent Funds Through MEA's 2015 EE Application, MEA Could Use Funds for Limited EE-Related Purposes.

Should the Commission determine that it wishes to distribute equivalent benefits through MEA's 2015 EE program application, MEA believes there are some uses of funds that relate to the successful implementation and administration of MEA's EE programs. However, MEA notes the resulting benefits would clearly lack equal treatment with the benefits accorded to the IOUs through ESPI funds.

MEA could utilize funds for database construction and management for reporting purposes. MEA could also offer rebates that focus on customers who choose to have an energy audit conducted in their homes to offset customer costs for audits or permits. It is difficult for a start-up organization such as MEA to fund the necessary capital investments to enhance program delivery, including IT systems development, which is required to support robust reporting requirements. Given the cost effectiveness constraints of portfolio funding, and the need to stay cost competitive for a viable business model, such necessary and capital intensive investments can be difficult to achieve, even when the governing Board is motivated to deliver effective EE programs. While the IOUs are able to recover costs for such investments, MEA has no external source of funding and therefore is at an inherent disadvantage in program design and delivery.

Additional funds disbursed through the EE application process could address some of these needs.

V. Conclusion

MEA respectfully requests that the Commission adequately addresses 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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PROPOSED MODIFICATIONS

Findings of Fact

1. The Commission adopted shareholder incentives in D.07 -09-043 so that EE programs will be pursued vigorously by utility management as a core business strategy. *At the time of D.07-09-043, no CCAs existed in the state. Thus, incentives envisioned in D.07 -09-043 are also applicable to CCAs that administer EE programs in accordance with Commission decisions and P.U. Code §381.1.*
2. Consistent with the Energy Action Plan, ~~shareholder~~ incentives for EE continue to be important as a tool to spur utility management to aggressively pursue EE goals as the priority in resource. Otherwise, *investor-owned* utilities will be more inclined to devote scarce resources to supply -side procurement on which they earn a return, and not on meeting or exceeding the Commission's EE goals, or maximizing ratepayer net benefits in the process. *Similarly, CCAs will be more inclined to devote scarce resources to revenue-generating activities and not on meeting or exceeding the Commission's EE goals, or maximizing ratepayer net benefits in the process.*

New Finding: *Although the ESPI mechanism applies primarily to IOUs, CCAs are also eligible to participate when they administer EE programs authorized by the Commission pursuant to P.U. Code §381.1.*

5. Consistent with the Energy Action Plan, the largest component of ~~a shareholder~~ incentive mechanism focuses on realization of resource savings.
21. Assuming current levels of utility activity, however, 2013 -2014 ESPI earnings potential would approximate \$99.2 million, as calculated using formulas in the ACR dated April 4, 2013 and updated with budget numbers from the IOUs' Compliance Finding. *Calculations for CCAs should be made in accordance with the formulas set forth for the IOUs.*

Conclusions of Law

4. The ESPI mechanism should create incentives sufficient to motivate utility investors and managers to view EE as a core part of the utility's *or CCA's* operations that can generate meaningful earnings for its shareholders *or meaningful funds for a CCA* . At the same time the adopted incentive mechanism should protect ratepayers' financial investment and ensures that program savings are real and verified.
9. ~~Issues relating to how the use of EE budget funds should be prioritized or allocated among utilities and other entities, how EE savings should be incorporated into supply side procurement planning, and the design of incentives for CCAs or other non utility entities, are beyond the scope of this proceeding.~~

Ordering Paragraph

2. Pacific Gas & Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, ~~and~~ Southern California Gas Company, and *Marin Energy Authority* shall each be eligible for claiming incentive awards under the Efficiency Savings and Performance Incentive mechanism in accordance with the terms and conditions set forth in Attachments 1 through 7.