

**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)

**PREHEARING CONFERENCE STATEMENT OF
THE UTILITY REFORM NETWORK,
BUILD IT GREEN,
BRIGHTLINE DEFENSE PROJECT,
CALIFORNIA BUILDING PERFORMANCE CONTRACTORS ASSOCIATION,
CALIFORNIA CONSTRUCTION INDUSTRY LABOR
MANAGEMENT COOPERATION TRUST,
CALIFORNIA ENERGY EFFICIENCY INDUSTRY COUNCIL,
CALIFORNIA HOUSING PARTNERSHIP,
THE GREENLINING INSTITUTE,
NATURAL RESOURCES DEFENSE COUNCIL,
SIERRA BUSINESS COUNCIL, AND
SMALL BUSINESS CALIFORNIA**

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**PREHEARING CONFERENCE STATEMENT OF
THE UTILITY REFORM NETWORK, BUILD IT GREEN, BRIGHTLINE
DEFENSE PROJECT, CALIFORNIA BUILDING PERFORMANCE
CONTRACTORS ASSOCIATION, CALIFORNIA CONSTRUCTION INDUSTRY
LABOR MANAGEMENT COOPERATION TRUST, CALIFORNIA ENERGY
EFFICIENCY INDUSTRY COUNCIL, CALIFORNIA HOUSING
PARTNERSHIP, THE GREENLINING INSTITUTE, NATURAL RESOURCES
DEFENSE COUNCIL, SIERRA BUSINESS COUNCIL,
AND SMALL BUSINESS CALIFORNIA**

I. INTRODUCTION

Pursuant to Rule 7.2 of the Commission’s Rules of Practice and Procedure and *Notice of Prehearing Conference and Administrative Law Judge’s Ruling (ALJ Ruling)*, issued November 27, 2013, in this proceeding, The Utility Reform Network (TURN) hereby submits this prehearing conference (PHC) statement jointly with the following parties: Build It Green, Brightline Defense Project, California Building Performance Contractors Association, California Construction Industry Labor Management Cooperation Trust, California Energy Efficiency Industry Council, California Housing Partnership, The Greenlining Institute, Natural Resource Defense Council, Sierra Business Council, and Small Business California (collectively, “Collaborative Parties”).¹

II. RESPONSE TO *ALJ RULING*

A. Proposed Schedule for Phase I

The Commission’s Order Instituting Rulemaking (R.) 13-11-005 sets forth a proposed schedule for this proceeding with three Phases, which would proceed seriatim. The *ALJ Ruling* proposes a comprehensive schedule for Phase I, under which the Commission would vote on a decision in early May, 2014, setting forth portfolio funding for 2015.² Phase I, as contemplated in R.13-11-005, will address the issues that need to be resolved to ensure funding is in place through 2015 for a “slightly modified version of

¹ The *ALJ Ruling* instructs that PHC Statements shall be no longer than 6 pages “including caption and signature block” due to the large number of parties anticipated to file PHC Statements. *ALJ Ruling*, p. 2. This PHC Statement exceeds 6 pages solely because it includes 11 signature blocks. TURN respectfully submits that this PHC Statement achieves efficiencies by reflecting the positions of 11 parties and requests that the Commission accept it, despite its length, as consistent with the spirit of the *ALJ Ruling*’s page limit.

² *ALJ Ruling*, p. 2.

[the administrators'] current portfolios.”³ Because the Commission does not expect to conclude its review and analysis of a new “Rolling Portfolio” framework in time to plan for and implement the broad changes by January 1, 2015, Phase I is intended to ensure that portfolio activity does not come to a halt at the end of the current 2013-2014 portfolio cycle.⁴

The Collaborative Parties support the schedule proposed for Phase I with one clarifying caveat discussed here, and another modification addressed in Section II.B below. The Collaborative Parties strongly recommend that the Commission ensure that the Phase I decision is not only timely issued, but crafted to expressly support the objectives identified in R.13-11-005 of moving to Rolling Portfolios, including but not limited to eliminating the market barriers and transaction costs created by short-term commitments, the concomitant erosion in confidence at all levels of the market, and lost opportunities to capture cost-effective energy efficiency (EE) savings. To this end, The Collaborative Parties caution against simply extending funding for an additional year of program activity in Phase I. The practical impact of such an approach would be that implementers and administrators could be faced with the need to address contracts just for 2015, and then re-negotiate contracts during 2015, consistent with the Commission’s longer-term funding authorization and guidance in Phase II (and potentially also Phase III) of this proceeding.⁵ This approach would not only defer until 2016 the benefits touted by R.13-11-005 of a Rolling Portfolio, but would perpetuate the problems of the status quo framework.

Instead, The Collaborative Parties advocate crafting the Phase I decision to leave open the possibility that 2015 would function more like “year zero” in a long-term Rolling Portfolio, rather than the last year in a wholly distinct regime, depending on the outcome of the Phase II decision.⁶ The Commission could do so by indicating in the

³ Order Instituting Rulemaking (O.I.R.) 13-11-005, pp. 3, 6.

⁴ O.I.R.13-11-005, p. 6.

⁵ O.I.R.13-11-005, p. 9 (anticipating “moving to a longer-term funding horizon”).

⁶ While O.I.R.13-11-005 initially states that the Commission will evaluate “the implications of ‘Rolling Portfolios’ for the post-2014 energy efficiency activities...,” (p. 3), the O.I.R. later indicates the Rolling Portfolio would be in place beginning in 2016 (p. 5). The Collaborative Parties recommend removing this ambiguity in the forthcoming Phase I Scoping Memo by clarifying that the Commission does not intend to preclude moving to a Rolling Portfolio approach over the course of 2015.

forthcoming Scoping Memo that the Commission intends for the Phase I decision to encourage and support more open-ended contracting than has typically been used in energy efficiency by eliminating any funding-related obstacles.

Providing administrators with sufficient funding authority in Phase I to continue programs beyond 2015, unless otherwise directed by the Commission, would support the transition to Rolling Portfolios without prejudicing the outcomes of the subsequent Phases of this proceeding. If the Phase I decision were to provide funding sufficient to support contracting through 2015 *and beyond* by mutual agreement of the parties (assuming that performance benchmarks are met and the Commission does not direct otherwise), then programs would be positioned to potentially move into the Rolling Portfolio when the Commission puts in place appropriate policies, procedures, and timelines. Of course such programs would then be subject to all of the new processes and oversight for portfolio planning and management; nothing would be locked in indefinitely.

The *ALJ Ruling* proposes that the administrators file proposals for 2015 portfolio funding on February 15, 2014.⁷ The Collaborative Parties do not object to the timing of this filing. However, consistent with a more open-ended approach to program implementation, the Collaborative Parties recommend that the Commission direct the administrators to address within their Phase I proposals what type of funding authorization would support contracting in 2014 for EE services for 2015 and beyond. One approach could be to authorize EE funding for 2015 as an extension of the 2013-2014 portfolio cycle, and additionally authorize the continuation of that same funding beyond 2015 unless or until superseded by a Commission decision approving the Rolling Portfolio funding.⁸ Conditionally extending funding authorization through 2015 and beyond in this way would provide more certainty to administrators and implementers of program continuation, reduce program upheaval and transactional costs associated with the contracting process, and allow the parties to focus on delivering energy efficiency programs to customers.

⁷ *ALJ Ruling*, p. 2.

⁸ O.I.R.13-11-005 indicates the Commission's intention to address long-term funding authorization in Phase II. (O.I.R.13-11-005, pp. 2, 8).

B. Administrator Filings for 2015 Portfolio Funding

The *ALJ Ruling* invites comments on the form that the administrator filings should take for 2015 portfolio funding.⁹ The Collaborative Parties do not propose any particular form at this time, other than that the administrators should include in their proposals suggested funding authorization that would support more open-ended contracting, potentially beyond 2015 (as addressed in Section I.A. above).

In preparing this PHC statement, the Collaborative Parties have had an opportunity to review the proposals to be submitted by certain other parties regarding the content of the administrator filings. The Collaborative Parties agree with Pacific Gas and Electric Company (PG&E) and the National Association of Energy Service Companies (NAESCO) that the Commission should permit the administrators to include proposals to change the budget categories approved in D.12-11-015, for the purpose of improving portfolio responsiveness to market conditions, as well as to increase opportunities for new or expanded innovative programs. The Collaborative Parties additionally agree with NAESCO that the Commission should permit the administrators to propose policy changes related to the implementation of Title 24, including, but not limited to, proposals for additional “to code” pilot programs, proposals related to appropriate baselines for savings calculations, and proposals for any required modifications to goals/potential as a result of Title 24 implementation.¹⁰

Finally, the Collaborative Parties recommend that the Commission strongly encourage the administrators to confer with interested stakeholders as they prepare their filings so as to increase the transparency of the decision-making process behind the proposed portfolio changes (if any) and minimize the need for discovery, especially important given the compressed schedule. Furthermore, while the *ALJ Ruling* suggests a workshop on the administrator filings shortly after those filings would be due on Feb. 15, 2014, the Collaborative Parties recommend that the workshop be held before the filings are due, rather than after. This approach would help to uncover and potentially avoid disputes over portfolio changes to be proposed by the administrators and/or the showing

⁹ *ALJ Ruling*, p. 2.

¹⁰ Of course the Collaborative Parties cannot anticipate whether we individually would support or oppose those proposals before seeing them, but we agree that these issues are important and timely and should be considered by the Commission in this Phase of this proceeding.

to be provided in support thereof.

III. ADDITIONAL COMMENTS

As referenced above, the Commission in O.I.R.13-11-005 divided this proceeding into three phases and provided a proposed scope and high-level schedule for each phase. The *ALJ Ruling* has invited comment on Phase I only. The Commission has not yet solicited comment on the proposed scopes and schedules of the other two phases, and there is no indication of whether such opportunity will arise before the conclusion of Phase I. In the absence of an alternative opportunity to address time-sensitive issues related to the remainder of this proceeding, the Collaborative Parties respectfully submit the following comments here.

A. Phase II Schedule

In O.I.R.13-11-005, the Commission encouraged “parties to collaborate through informal stakeholder forums to submit a joint proposal or party proposals for a ‘Rolling Portfolio’ filing and review process” in Phase II of this proceeding.¹¹ O.I.R.13-11-005 indicates that the Commission “will establish a timeline for Phase II of this proceeding upon completion of Phase I”¹² According to the schedule proposed in the *ALJ Ruling*, the Phase II schedule would not be established until May 2014 or later, and then the actual record development would presumably commence thereafter.¹³ While the Collaborative Parties certainly appreciate the appeal of a linear ordering of the phases from a workload perspective, we recommend that the Commission entertain an earlier (yet limited) start to Phase II.

As the Commission may be aware, the Collaborative Parties have been participating in a collaborative process with many stakeholders for the past seven months for the purpose of developing a Rolling Portfolio framework proposal (among other objectives). Given the work that has already occurred, and the momentum currently underway, the Collaborative Parties recommend that the Commission schedule workshops in March 2014 to explore potential “Rolling Portfolio” proposals under

¹¹ O.I.R.13-11-005, p. 10.

¹² O.I.R.13-11-005, p. 10.

¹³ *ALJ Ruling*, p. 2.

development by parties and/or Commission staff. While the rest of the work in Phase II may not occur until after the Phase I decision, the Collaborative Parties believe that scheduling early workshops would enable parties to be better positioned to assist the Commission in developing the Phase II record as expeditiously and efficiently as possible to achieve the Commission's target Phase II decision date of September 2014.¹⁴

B. Scope of R.13-11-005

The Collaborative Parties generally support the issues proposed for inclusion in Phase II and III of this proceeding, with one exception. The issue of EE workforce, education, and training (WE&T), which has become an area of keen interest for the Commission,¹⁵ does not expressly appear in O.I.R.13-11-005. The Collaborative Parties recommend that the Commission clarify, whether in the forthcoming Scoping Memo or another ruling, that WE&T issues will be addressed in this proceeding, and specifically in Phase II, to the degree that they necessarily relate to the establishment of a "Rolling Portfolio."

Date: December 6, 2013

Respectfully submitted,

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(additional signature blocks appear on the following pages)

¹⁴ O.I.R.13-11-005, p. 5.

¹⁵ See, *i.e.*, D.12-11-015, p. 90 and OP 34 (directing the utilities to allocate at least \$500,000 to an expert consultant to design a comprehensive approach to WE&T to inform post-2014 program planning).

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