BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the Commission's Post-2008 Energy Efficiency Policies, Programs, Evaluation, Measurement, and Verification, and Related Issues.	R.09-11-014 (Filed November 20, 2009)

REPLY COMMENTS OF EMERGING TECHNOLOGIES ASSOCIATES INC ON THE ADMINISTRATIVE LAW JUDGE'S RULING REGARDING ENERGY EFFICIENCY FINANCING

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I. INTRODUCTION

Pursuant to the January 10, 2012 *Administrative Law Judge's Ruling Regarding Energy Efficiency Financing Rule* (Ruling), Emerging Technologies Associates Inc, ("ETA") respectfully submits these reply comments on Section 6B and 6C of the Ruling. We have participated in the 2010 and February 8 through February 2012 Workshops and have read the Energy Division's Proposal for *Energy Efficiency Finance Activity for 2013-2014*, Harcourt Brown & Carey, Inc.'s report *Energy Efficiency Financing in California: Needs and Gaps*, and Environmental Defense Fund's proposal *On-Bill Repayment:Unlocking the Energy Efficiency Puzzle in California*.

We have also reviewed the *California 's Long-Term Energy Efficiency Strategic Plan* prepared by the California Public Utilities Commission by way of background. Our firm also participated in the *Energy Efficiency Finance Workshop at the California Public Utilities Commission in San Francisco on November 16 and 1, 2010.*

II. DISCUSSION

A. In answer to Mrs. Jeanne Clinton's question about how to make the financing available to 50% of the market, we agree with several statements made by other parties:

1. Keep all new financing and loan origination, underwriting and administration simple, quick and transparent to the borrowers.

Even under the relatively simple OBF structure, it takes now over six months to get financing approved and funded by the IOU's.

2. Risk minimization should be the program goal which was stated by Mr. Michael Sandler. He is absolutely: financing in itself should not be the motivator of projects; assessing the business risks from many vantage points (credit, project performance, energy rates risks and solvency risks) should be clearly defined and considered.

B. ETA recommends that the Commission and Energy Division examine some fundamental issues that were raised about Section 6B and 6C of the Ruling during the Workshops of February 8 and 10 of 2012 for the commercial, industrial, government and institutional sectors as follows.

RULING SECTION 6B PROGRAM DESIGN AND OPERATION:

1. Objectives for a Ratepayer Program:

A fundamental question we have is why the CPUC and the investor-owned utilities want to be in the business of creating a new financial institution?

In the 2010-2012 program cycle with 10 months left to run, the IOU's have $41.5 million lending pool: as of 9/11, they had disbursed only $21 million. Have you asked the IOU's why the remainder is not disbursed? OBF has a clean financing structure and has received good market reception in all of the IOU's markets.

We agree with the recommendation made by the City of San Francisco to look at non utility –based financing as part of your evaluation of this new program and not just rely on a utility based OBR as the ultimate solution to promote market adoption.

Another key question that this ruling should ask is why the CPUC wishes to change to a new type of financing when the market, especially small businesses, just began to incorporate OBF into their energy efficiency financing strategies?

a. Quality Control: in our opinion, it is not possible to ensure quality control on every loan originated as the cash flow generated from the energy efficiency measures are dependent on so many variables such as end-users satisfaction with the energy efficiency project from function, health, safety, esthetic, and/or other needs. The latter do not always surface at the beginning of a project.

b. All of the other goals that are in 6B.1 **require expertise on a scale comparable to setting up a new commercial bank and investment bank**, administered by the utility companies. Is the **expertise** of the Commission's consultants such that they are experts at starting banks de novo? The speakers on Day #3 of the Workshop stated many credit and business risks for the financial institutions that are being sought to participate in this program.

c. Repayment obligations tied to the meter does not give the financial institutions more protection or clout as if the business is illiquid or near bankruptcy or if the building has been vacant and continues to be for several years, there is no real incentive or disincentive to tie repayment to shut off or turn on meters.

d. We agree 100% with Mark Zimring, LNBL, that" financing dose not fundamentally improve the economics of (energy efficiency) projects": adding leverage in the current commercial real estate market that is already heavily leveraged will continue to perpetrate the low levels of cash flow. Instead of this strategy, we recommend that the CPUC look at corporate finance strategies that first look to internally-generated operating cash flow. This will address Mr Zimring's concern.

e. A vital credit issue that needs to be surfaced with underwriting standards is the ability of the business to improve cash flow prior to applying for additional indebtedness through OBR, PACE or other EE Financing.

    i. ETA recommends that this cash flow enhancement solution be addressed with an education program that starts with the **ENERGY STAR Program For Buildings & Plants**. The US EPA Program 's Staged Approach starts with internally-generated cash flow that can occur before recommending that businesses, large or small, take on more debt. Small businesses are stretched right now from a working capital and cash flow standpoint.

    ii. Financial service providers who specialize in Energy Efficiency Financing educate their customers on this important benefit of energy efficiency. The LA Commercial Building Performance Partnership (LACBPP),an ARRA-funded initiative , Energy Upgrade CA Program clearly adopts this financing strategy and educates the end users on this key benefit. [1]

C. RULING SECTION 6C DETAILED PROGRAM IMPLEMENTATION QUESTIONS:

1. **ETA recommends that you approach the Financial Accounting Standards Board (FASB) be approached to ensure that OBR conforms with their**

[1] LA Commercial Building Performance Partnership (LACBPP) - an ARRA-funded initiative

definition of "off balance sheet financing"[2]: It was suggested that OBR is off balance sheet financing during the Workshop.

In accordance with recent news articles, the FASB is considering the accounting treatment of energy efficiency retrofit financing for many financing vehicles. [3]

2. **ETA recommends that the Commission the rating agencies that rate debt instruments to determine what would be required by them to properly rate the securities that will be created by the energy efficiency loans.**

   Standard & Poor's, Fitch and Moody's should be able to help with the securitizing questions and concerns that were surfaced by the Day # 1 and #3 speakers.

3. **We also recommend early contact with banking and financial markets regulators such as the FDIC, the Comptroller of the Currency and The Securities & Exchange Commission. These entities can provide the Commission technical guidance on properly securitizing the new debt instruments.**

4. We recommend that the Commission maintain contact with the commercial banks that are not able to participate in this Energy Efficiency Financing to provide California taxpayers and ratepayers competitive market options.

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2 Alan Miller, Mind the GAAP: Will Proposed Accounting Standards Changes Hinder Investments in Building Energy Efficiency Retrofits?
http://www.institutebe.com/clean-energy-finance/Protecting-the-Market-for-Energy-Efficiency-Retrof.aspx

3 Financingenergyefficiency.com "Mind The GAAP" – Why off-balance sheet financing is essential for retrofits MAY 14, 2011

There are at least 5,000 community banks and leasing companies who have been offering energy efficiency financing to the small businesses that represents a large portion of your market. ETA believes that they have contacted the Commission through Mrs. Jennifer Finnigan earlier this year. Not being a "party" to your Ruling, they are not able to comment to this proceeding.

5. If the utilities have only been able to book $21 million out of the $41.5 million approved in the 2010-2012 Program Cycle for the four large IOU's, I am wondering whether you have considered more marketing and PR outreaches to educate all market segments to the benefits of OBF and stay the course with this financing program.

   The concern voiced by the IOU's present at the Workshop (Day #3) on underwriting, operations and other processing issues are very valid.

III. CONCLUSION

ETA appreciates this opportunity to contribute to the Commission's efforts to develop an Energy Efficiency Program that will supplement current market-based programs.

In conclusion, before you proceed with the next step and schedule the next proceeding, ETA would like to recommend that you factor in the cost effectiveness and added legal, economic and credit risks of this new initiative and compare it against outright rebates and incentives.

If the Commission is considering utilizing some of $1 billion funds toward this new financing vehicle, ETA recommends careful evaluations of the costs and benefits of all programs including of public marketing and educational outreach as well as subsidies. This is vital in light of our State chronic budget problem.

To reduce rebates and incentives and redirect any funds toward this new initiative should also take into account the added costs including the technical consulting due diligence and other added costs that this undertaking would necessitate.

Our firm trains small businesses, non-profit organizations, professional, contractors and labor union members statewide: we strongly feel that the additional investment of ratepayer's funds could be used instead to educate all CA small businesses and energy efficiency solutions in the financial value of energy efficiency strategies: the latter do not have to involve taking on indebtedness as a first step.

Dated: February 17, 2012 Respectfully submitted,

By: __________/s/_______________

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