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**REPLY COMMENTS OF THE UTILITY REFORM NETWORK
ON THE MARKET TRANSFORMATION WORKING GROUP REPORT**

[PHASE III]

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I. INTRODUCTION

On April 10, 2019, the Commission issued *Administrative Law Judge's Ruling Seeking Comment on Market Transformation Working Group Report* (Ruling). As the Ruling explains, a working group convened by the California Energy Efficiency Coordinating Committee prepared a report that proposes a framework for energy efficiency (EE) market transformation initiatives in California.¹ The Ruling invites parties to comment on the Market Transformation Working Group (MTWG) report and poses specific questions to guide comments.² Pursuant to the Ruling, The Utility Reform Network (TURN) respectfully submits these reply comments on the MTWG report.³

II. RESPONSES TO THE QUESTIONS IN THE RULING

A. Question 1: Please comment on the overall energy efficiency market transformation framework suggested in Attachment A and other consensus recommendations in the report. Should the Commission adopt this framework? Why or why not?

Marin Clean Energy (MCE) “largely supports” the MTWG’s proposed framework but takes what appears to be a unique position on the role of the Market Transformation Administrator and purpose of the framework.⁴ MCE suggests that the framework should be used “to identify MTIs [Market Transformation Initiatives] and then to work with all existing EE program administrators,” including MCE, Regional Energy Networks, and

¹ See Ruling, Attachment A.

² Ruling, pp. 2-5.

³ See Ruling, p. 5 (setting a due date for reply comments of May 20, 2019).

⁴ MCE Comments, p. 1.

IOU Program Administrators (PAs), “to integrate MTIs into the EE business plans.”⁵

MCE expresses concern at the prospect of designing MTIs “as separately implemented EE programs that are removed in whole or in part from existing PA programs.”⁶

TURN agrees with MCE that coordination between MTIs and resource acquisition programs is critical to maximizing the benefits of both. As Resource Innovations explains:

There are two key areas of overlap that will be important for both resource acquisition (RA) and MT programs: Accounting for savings between the two so no double counting occurs; and creating joint, seamless approaches/messages to the market actors – customers, mid-stream actors, up-stream actors and manufacturers for example – so RA savings can be enhanced in the near-term, MTIs can achieve their longer-term savings goals, and market actor confusion can be minimized.⁷

However, TURN disagrees with MCE to the extent MCE is suggesting that the implementation of MTIs should be overseen by all of the existing PAs as part of their rolling portfolios. Rather, MTIs should be managed as a separate portfolio of programs by the Market Transformation Administrator(s) in close coordination with the PAs who have RA programs targeting the same markets and/or measures as the MTIs.⁸ Resource Innovations offers a useful image for this coordination: “MTIs can be designed as a ‘wrap-around’ of existing RA activities – intended to enhance, not replace or disturb.”⁹

⁵ MCE Comments, p. 1.

⁶ MCE Comments, p. 2.

⁷ Resource Innovations, p. 5.

⁸ See Northwest Energy Efficiency Alliance (NEEA), Response to Question 4, (“Given the differences between RA programs and MTIs, NEEA would recommend that the MTIs be managed as a separate portfolio of programs ...”).

⁹ Resource Innovations, p. 6.

B. Question 2: What concerns, if any, do you have about the market transformation framework as proposed in the MTWG report? What aspects would you modify? What aspects would you keep?

Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE), and Southern California Gas Company (SoCalGas) (collectively, the Joint IOUs), perplexingly suggest that the MTWG proposed framework “does not address MTIs that attempt to change a market bottom-up,” as opposed to MTIs ending in adoption of a code or standard (C&S).¹⁰ They recommend that the “adopted framework should contain enough flexibility to accommodate these two routes” to market transformation.¹¹ TURN agrees that the framework should accommodate both types of MTIs and is confident that the MTWG framework was designed to do just that.

The first of nine “Market Transformation Guidelines and Strategies” proposed by the MTWG clearly telegraphs the group’s expectation that MTIs resulting from, and governed within, the framework will include what the Joint IOUs refer to as bottom-up MTIs. That guideline is as follows: “MTIs should not be limited to technologies and should consider additional approaches that strive to meet the State’s goals (e.g., behavior, equity, workforce, code compliance strategies, etc.).”¹²

Moreover, the Stage Gate Process is equally applicable to both types of MTIs. The “Draft Intake Application Form” provided in Appendix D to the MTWG report clearly instructs that MT efforts need to be designed towards one of two end states:

¹⁰ Joint IOUs, p. 4.

¹¹ Joint IOUs, p. 4.

¹² Ruling, Appendix A (MTWG Report), p. A-12.

either C&S adoption or the reduction of market barriers “to the point where the same intervention is no longer needed.”¹³ Similarly, the “MT Plan,” called for at Stage 4, “will describe the specific anticipated market benefits including but not limited to: elimination of barriers to EE, potential to scale, desired time to reach specific levels of market adoption/saturation, and other variables that would influence the Bass Diffusion curve.”¹⁴ This description does not require an MTI to result in C&S. Likewise, the “transition or sunset” of each MTI at Stage 7 contemplates both MTIs resulting in C&S and those that do not:

Once metrics indicate successful transformation of the market where publicly funded interventions are no longer necessary, MTA(s) will implement the market transition strategy. The MTA(s) will conclude the intervention through a transition to C&S, continuation of long-term monitoring through EM&V as provided for in the MT plan, or transition to Rolling Portfolio program teams for a relaunch.¹⁵

Last but not least, the MTWG’s recommendations regarding a cost-effectiveness framework for MT anticipate that some, but not all, MTIs will ultimately yield C&S savings. As the report explains, “Any MTI CE calculation should include projected C&S costs and savings, when applicable. Such an approach would be applicable if an objective of the MTI were to yield C&S.”¹⁶

Accordingly, TURN recommends that the Commission find that the MTWG proposed framework will accommodate both types of MTIs recognized by the Commission.

¹³ Ruling, Appendix A (MTWG Report), p. A-69.

¹⁴ Ruling, Appendix A (MTWG Report), p. A-20.

¹⁵ Ruling, Appendix A (MTWG Report), p. A-22.

¹⁶ Ruling, Appendix A (MTWG Report), p. A-43.

C. Question 3: Comment specifically on your preferred resolution of the first non-consensus issue identified in Attachment A (see pages 24-31) with respect to the appropriate choice for Market Transformation Administrator. Parties may also propose other alternatives, if there are administrative models that were not discussed in the report, but should be considered.

The Joint IOUs and the Southern California Regional Energy Network (SoCalREN) both call for adoption of Option 1: Administration by the Existing PAs. The California Efficiency + Demand Management Council (the Council) believes that either Option 1 or Option 2 (a Single, Independent Statewide Administrator) could effectively implement the MTWG framework as long as that entity followed certain principles related to uniformity, clarity, and customer experience.¹⁷ The Commission should take note of the fact that these three parties differ in their vision of what Option 1 would entail. While SoCalREN advocates a framework wherein all of the existing PAs could serve as Market Transformation Administrators (MTAs), including the non-IOU PAs, the Joint IOUs “[s]pecifically ... support having IOU PAs be the MTAs.”¹⁸ In contrast, the Council envisions a single IOU as the MTA in Option 1.¹⁹ Moreover, neither the Joint IOUs nor SoCalREN demonstrates the superiority of Option 1 over Option 2.

SoCalREN worries that Option 2 would “fragment the well-defined Commission

¹⁷ The Council Comments, p. 4.

¹⁸ SoCalREN Comments, p. 3; Joint IOUs Comments, p. 4.

¹⁹ The Council Comments, p. 4 (“We believe that either an *Investor-Owned Utility (IOU)*- lead or an Independent State-Wide Program Administrator could effectively implement the Market Transformation Framework... as long as the following principles are followed: To transform the marketplace, *the selected MTA*, therefore, needs to require that all MTIs...” (emphasis added). The Council elsewhere refers to a single MTA, e.g., pp. 7 (“It will be up to the MTA ...”), 8 (“Ensure the chosen MTA is required to perform...”)).

EE portfolio framework.”²⁰ SoCalREN’s reference to a “well-defined” EE framework overlooks the recent changes and potential future changes in the way EE activities are administered in California. Between 2013 and 2018, California had seven PAs, including the four IOU PAs, MCE, SoCalREN, and the Bay Area Regional Energy Network (BayREN).²¹ Then with the issuance of D.18-05-041, the Commission approved the formation of a new REN, the Tri-County REN, encompassing Ventura, Santa Barbara, and San Luis Obispo Counties.²² We now have eight PAs. Just last month, the Western Riverside Council of Governments, Coachella Valley Association of Governments, and San Bernardino Council of Governments expressed interest in forming a new REN, the Inland Regional Energy Network (I-REN), should the Commission permit that.²³ Finally, it is possible that additional existing or new Community Choice Aggregators (CCAs) will elect or apply to administer energy efficiency program funding in the future, although those options have not been popular so far among the existing CCAs.²⁴

SoCalREN also warns that Option 2 would “cause redundancies and inefficiencies in the existing Commission authorized PA framework.”²⁵ However, as the MTWG report

²⁰ SoCalREN Comments, p. 3.

²¹ The Commission first approved budgets for BayREN and SoCalREN in D.12-11-015 for program activities starting in 2013-2014.

²² D.18-05-041, pp. 105-109.

²³ Opening Comments of the Western Riverside Council of Governments on Behalf of the Inland Regional Energy Network on Administrative Law Judge’s Ruling Seeking Comment on Future of Regional Energy Networks, filed 4/16/19, in this proceeding, pp. 2-3.

²⁴ See ALJ Ruling Seeking Comment on Future of RENs, issued 3/27/19, pp. 5, 7 (citing as a “major emerging trend” the “proliferation of numerous new CCAs serving customers throughout the state within the territories of the” IOUs and questioning whether this would create increasing “portfolio overlap” with the RENs). Indeed, according to the California Community Choice Association, there are currently 19 CCA programs serving more than 10 million customers in California and numerous other communities considering CCA. (<https://cal-cca.org/cca-impact/>). However, to date only MCE and Lancaster Choice Energy offer their own EE programs.

²⁵ SoCalREN Comments, p. 3.

explains in the rationale for Option 2, having a single statewide MTA would make coordination more efficient, not less:

In addition to overseeing MT activities across the state, the MTA (Independent Statewide) will serve as a central point of coordination with all of the Rolling Portfolio PAs to ensure that the MTIs and Rolling Portfolio activities are integrated as appropriate and are otherwise complementary. In contrast, under a framework with multiple Existing PA MTAs, each would need to coordinate and integrate its MT activities not only with its own Rolling Portfolio, but also with the Rolling Portfolios of each of the other PAs.²⁶

The Joint IOUs similarly point to the advantages existing PAs would have as MTAs because of each PA’s inherent familiarity with the resource acquisition (RA) programs within its own rolling portfolio. The Joint IOUs suggest this would enable “synergistic implementation of existing and new third-party RA programs and MTIs” to occur.²⁷ They appear to overlook the broader responsibility of an MTA in the MTWG’s framework: to consider all RA programs *across the state* in selecting, developing, and implementing MTIs. Thus, the “natural advantage” an existing PA would have in terms of familiarity with its own rolling portfolio RA programs would not prepare that PA to carry out the responsibilities of an MTA overseeing statewide MTIs.

For the same reason, the Commission should dismiss the Joint IOUs’ argument that “each IOU PA has the unique ability to ensure collaboration to enhance outcomes by leveraging and co-promoting other demand-side management offerings.”²⁸ While an IOU PA would be well-positioned in theory to “leverage” and “co-promote” its own demand-side management offerings – although TURN notes that the Commission has previously

²⁶ Ruling, Appendix A (MTWG Report), p. A-38.

²⁷ Joint IOUs Comments, p 5.

²⁸ Joint IOUs Comments, p. 5.

had to order such leveraging and co-promotions²⁹ – they would not be at any advantage in terms of the demand-side offerings of other load serving entities (LSEs). For instance, both MCE and Sonoma Clean Power offer demand response programs.³⁰ An independent statewide entity would in fact be in a better position than an IOU to coordinate with and co-promote the demand-side management programs of all PAs, without any perceived or actual tensions related to competition among LSEs.

The Joint IOUs also intimate that the Commission’s oversight under Option 1 would be more certain because the IOUs are fully regulated entities, whereas a single, independent statewide MTA would not be.³¹ The Commission should reject this argument, as well.

First of all, the Commission has a variety of well-established mechanisms in place for overseeing the expenditures of ratepayer funds by non-IOU entities because non-IOU entities have administered ratepayer-funded programs under the Commission’s oversight for many years. For instance, non-IOUs have administered EE funds (MCE and the RENs); Statewide Marketing, Education & Outreach funds (the Center for Sustainable Energy (CSE) and DDB San Francisco); California Solar Initiative funds, including the general market program and subprograms (CSE and GRID Alternatives); and Self-Generation Incentive Program funds (CSE). TURN is not aware of any of these entities

²⁹ See D.16-11-022, pp. 35, 118, 393 (directing the utilities to educate customers receiving certain measures through the Energy Savings Assistance Program about demand response offerings from which they might benefit); D.18-05-019, pp. 36-38 (directing the utilities to test strategies for integrating certain EE and demand response offerings).

³⁰ See MCE 2019 integrated Resource Plan, November 2018 available here: https://www.mcecleanenergy.org/wp-content/uploads/2019/01/MCE-2019-Integrated-Resource-Plan_11-8-2018_V_12-21-18.pdf, pp. 14-17 (“Current DER Programs and Projects”); Sonoma Clean Power Grid Savvy Demand Response Program, available here: <https://sonomacleanpower.org/news/join-the-gridsavvy-community>.

³¹ Joint IOUs Comments, pp. 5-6.

“going rogue” because the Commission’s regulatory authority over them was not the same as its authority over a Commission-jurisdictional utility company.

Second, the IOUs’ responsiveness to and compliance with the Commission’s requirements is obviously imperfect. TURN provides a few examples here for illustrative purposes. PG&E paid nearly \$100 million in remedies in Investigation (I.) 15-11-015 for its pattern and practice of egregiously violating the Commission’s *ex parte* rules, and additional penalties may be forthcoming in Phase 2 of that investigation.³² PG&E is also under investigation by the Commission in I.18-12-007 for falsifying documents in its gas system locate and mark program and in I.15-08-019 for having a corporate culture that enabled a series of catastrophic gas and electric system events, from the San Bruno gas pipeline explosion in 2010 to the Camp Fire in 2018.³³ The Commission recently fined SoCalGas \$8 million in I.17-04-021 for violating its tariffs related to customer billing.³⁴ In D.15-12-016, the Commission fined SCE for violating the *ex parte* rules and the Commission’s ethics rule in the context of the Commission’s investigation into the shutdown of the San Onofre Nuclear Generating Station (SONGS).³⁵ In D.08-09-038, the Commission ordered remedies well in excess of \$100 million after finding that SCE employees and management had manipulated and submitted false customer satisfaction data, which was used to determine Performance Based Ratemaking customer satisfaction rewards for SCE for a period of seven years.³⁶

³² D.18-04-014, pp. 2-3.

³³ *See, e.g.*, Assigned Commissioner’s Scoping Memo and Ruling issued in I.15-08-019 on 12/21/18, pp. 3-8 (describing the litany of serious safety events occurring within PG&E’s gas and electric operations, starting with the San Bruno explosion).

³⁴ D.19-04-041, p. 2.

³⁵ D.15-12-016, pp. 2-3.

³⁶ D.08-09-038, p. 2, issued in I.06-06-014.

A final example of imperfect compliance by the IOUs comes from the EE context, where the Commission annually evaluates the IOU PAs' conformance with the requirements of the ex-ante review process as part of determining shareholder awards through the Energy Savings and Performance Incentive (ESPI) mechanism. Staff calculates performance scores at the end of the year, after providing "Mid-year Feedback" on each IOU's ex ante review performance, where Staff identifies areas in need of improvement.³⁷ In 2018, Commission Staff found performance by every IOU PA to be lower than the Commission's expectations, as it did in 2017. For SDG&E, Staff calculated a 2018 ESPI performance score of 46.67 out of 100, which was lower than SDG&E's 2017 score of 51.55.³⁸ SoCalGas's performance scores were similar to SDG&E's in 2017 and 2018.³⁹ PG&E and SCE performed better, scoring 75.77 and 80.70, respectively, out of 100 in 2018.⁴⁰ These examples show that the Commission's "full authority to regulate and oversee" the IOU PAs, as the Joint IOUs highlight, does not guarantee that the Commission's expectations will be met.⁴¹

For all of these reasons, plus those presented in TURN's opening comments and in the MTWG report, the Commission should conclude that a Single, Independent Statewide MTA (Option 2) is the superior choice for California.

³⁷ See, e.g., SDG&E 2018 ESPI Mid-Year Performance Memo, pp. 2-3.

³⁸ SDG&E ESPI 2018 Final Performance Memo, Tables 1 and 2, available at <https://www.cpuc.ca.gov/General.aspx?id=4137>.

³⁹ SoCalGas ESPI 2018 Final Performance Memo, p. 2 (2018 score of 56.18 and 2017 score of 46.34).

⁴⁰ PG&E ESPI 2018 Final Performance Memo, p. 2; SCE ESPI 2018 Final Performance Memo, p. 2.

⁴¹ See Joint IOUs Comments, p. 5.

D. Question 4: Comment specifically on your preferred resolution of the second non-consensus issue identified in Attachment A (see pages 36-38) with respect to the cost-effectiveness threshold that should be required for market transformation initiatives? Parties may also propose other alternatives.

The Council recommends that the Commission “defer consideration of the appropriate cost-effectiveness metrics and targets for Market Transformation,” primarily because the Council questions the use of the TRC test in this context.⁴² The Council suggests that the Commission wait “until legislative action and consideration in other proceedings have provided further context” regarding use of the TRC test.⁴³

TURN disagrees with this approach. Just last week, the Commission adopted D.19-05-019 in Rulemaking 14-10-003, one of the proceedings referenced by the Council, concluding in pertinent part that the TRC test will be considered the primary test of cost-effectiveness for all distributed energy resources (including EE).⁴⁴ While the Commission could adopt different policies regarding cost-effectiveness at some unknown time in the future, TURN sees no benefit, and in fact only detriment, from staying action on a cost-effectiveness framework for MT in the meantime.⁴⁵

Instead, TURN recommends that the Commission adopt a cost-effectiveness threshold now, as well as the other cost-effectiveness policy recommendations presented

⁴² The Council Comments, p. 5.

⁴³ The Council Comments, pp. 2, 5.

⁴⁴ D.19-05-019, Ordering Paragraph 1 (“Beginning on July 1, 2019, the Total Resource Cost test shall be considered the primary test for all Commission activities, including filings and submissions, requiring cost-effectiveness analysis of distributed energy resources, except where expressly prohibited by statute or Commission decision.”).

⁴⁵ See, e.g., D.19-05-019, Ordering Paragraph 8 (directing Energy Division to conduct and complete an evaluation in 2021 to inform how the Societal Cost Test should be used in Commission decision-making in the future, which might – or might not – result in changes in the Commission’s approach to assessing cost-effectiveness of distributed energy resources).

in the MTWG report. These issues must be resolved so that the MTA(s) will understand the Commission’s requirements as MTIs proceed through the Stage Gate Process. If changes in state law or the Commission’s policies necessitate a different approach at some point in the future, the Commission can and should at that time update the MT cost-effectiveness framework.⁴⁶

E. Question 10: If a market transformation initiative, once approved, begins to perform poorly:

a. How will the Commission become aware that there is a problem?

The Joint IOUs erroneously suggest that the Commission will have “increased transparency” if the IOUs are the MTAs.⁴⁷ The Joint IOUs point to three opportunities for the Commission to have insight into “MT issues,” including through Staff’s participation in the Procurement Review Group (PRG) during MTI-related solicitations; participation in the MT Advisory Board; and through regulatory processes for review and approval of MTIs, MT Plans, and their associated budgets.⁴⁸ Yet only the first of these – involvement in the PRG – is unique to the model wherein the IOU PAs are MTAs.⁴⁹ Moreover, because the role of the PRG is to oversee solicitations related to MTIs, it is unclear how the PRG would be specifically aware of performance problems with an approved MTI. The MT Advisory Board would be the entity with such knowledge, per the information-sharing requirements proposed by the MTWG, irrespective of the

⁴⁶ See Ruling, Appendix A, p. A-42 (anticipating that the MT cost-effectiveness framework would be updated in conjunction with any changes to the Commission’s EE cost-effectiveness methodology stemming from ongoing or future proceedings).

⁴⁷ Joint IOU Comments, pp. 11-12.

⁴⁸ Joint IOU Comments, pp. 11-12.

⁴⁹ See Ruling, Appendix A, p. A-24.

identity of the MTA(s).⁵⁰

III. CONCLUSION

For the foregoing reasons and those presented in TURN's opening comments, TURN recommends that the Commission adopt the consensus recommendations of the MTWG, the recommendations set forth herein, and those in TURN's opening comments.

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⁵⁰ See Ruling, Appendix A, pp. A-26 – A-27.