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)

COMMENTS OF THE PUBLIC ADVOCATES OFFICE ON ADMINISTRATIVE LAW JUDGE'S RULING SEEKING COMMENT ON MARKET TRANSFORMATION WORKING GROUP PROPOSAL

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I. INTRODUCTION

The Public Advocates Office at the California Public Utilities Commission respectfully submits these comments pursuant to the *Administrative Law Judge's Ruling Seeking Comment on Market Transformation Working Group Report* issued on April 10, 2019 (Ruling). The Ruling seeks party comments on a report by the Market Transformation Working Group (MTWG Report), which was included as Attachment A to the Ruling.

The Public Advocates Office has been an active participant in the Market Transformation Working Group (MTWG) and supports the consensus items in the MTWG Report. In the responses below, the Public Advocates Office makes the following recommendations:

- The Commission should adopt a single statewide market transformation administrator (MTA) guided by a market transformation advisory board (MTAB) to oversee market transformation activities.
- The Commission should adopt a 1.5 total resource cost (TRC) value as a threshold for the approval of market transformation initiatives.
- The Commission should address potential overlap between market transformation initiatives that are funded within an energy efficiency market transformation framework and those funded by other ratepayer sources such as the building decarbonization program.
- The Commission should evaluate it market transformation framework in three years to address any issues that might be discovered through the early application of this framework.

II. RESPONSE TO ALJ QUESTIONS

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?***

The Public Advocates Office has been an active participant in the MTWG and supports the consensus items in the MTWG Report. The Commission should adopt the consensus recommendations in its decision on market transformation.

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?***

The Commission should clarify the accounting rules for market transformation to ensure that energy savings are not double-counted and are attributed to the correct activities and funding sources. Market transformation initiatives often address measures that will be moved into codes and standards once the market is sufficiently developed. When this happens some portion of the codes and standards savings can reasonably be attributed to the market transformation initiative. Market transformation programs may also target markets that are being addressed with efforts funded through other programs, such as the new building decarbonization program, which is being addressed in Rulemaking 19-01-011. Funding from multiple sources raises the need to identify which funding source should receive the credit for savings to avoid the potential for savings to be double counted. For the purposes of claiming savings and calculating cost-effectiveness, all energy savings should be attributed to the program or entity that provided the funding.

While it is appropriate for the Market Transformation Administrator (MTA) to count all of the savings associated with an initiative when describing the overall effects of the initiative in public communications, the MTA should not claim credit in regulatory filings for savings that are not due to its funding and efforts. The specific savings attributable to codes and standards and resource programs should be separated and attributed to the proper accounts in order to ensure that there is no double-counting and ratepayers are not double-paying for the same savings.

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 Public Advocates Office supports the adoption of a single non-IOU administrator to oversee and coordinate market transformation initiatives (Option 2).[1] The Commission should strive to approve market transformation initiatives that aim to transform markets statewide, regionally, or even nationally. A single administrator focused exclusively on market transformation will be better positioned to accomplish this than any single IOU administrator or coalition of administrators. An independent, statewide MTA will integrate the core functions associated with market transformation including the identification of promising projects, tracking of markets, program design, and evaluation design within a single organization. Integration will have the additional benefit of centralizing organizational knowledge and accelerating the learning process from initiative to initiative, leading to improvements in the management of the market transformation process over time.

Proponents of employing existing program administrators (PA) as MTAs express concern about coordination with the existing EE portfolio,[2] as well as interaction with other distributed energy resources and Integrated Resource Planning.[3] They argue that using the existing PAs will simplify the coordination between the Commission's various policy goals.[4]

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[1] Report and Recommendations to the California Public Utilities Commission, Attachment A to the *Administrative Law Judge's Ruling Seeking Comment on Market Transformation Working Group* (Ruling), pp. A-35 to A-39. Option 2 (Administration by a single, statewide administrator) is supported by the Center for Sustainable Energy, Coalition for Energy Efficiency, CodeCycle, Natural Resources Defense Council, Public Advocates Office, Resource Innovations, Sheet Metal Workers Local 104, Small Business Utility Advocates, and The Utility Reform Network.

[2] Option 1 (Administration by the Existing Program Administrators) is supported by Energy Solutions, Pacific Gas & Electric Company, Resource Innovations, San Diego Gas & Electric, SoCalGas, SoCalREN, Southern California Edison, and The Energy Coalition.

[3] Ruling, pp. A-30 to A-33.

[4] Ruling, p. A-31.

However, the coordination advantages of using existing PAs as MTAs appear to be more hypothetical than real. There is a significant risk that the IOUs will not prioritize the market transformation function within the broader organization. If a market transformation initiative lacks a strong advocate within each IOU, it may be compromised in favor of meeting other IOU goals. As market-transformation initiatives are long-duration projects with uncertain outcomes, the pursuit of market transformation could easily be compromised when it conflicts with shorter-term goals for which PAs are accountable, such as meeting resource acquisition goals.

Coordination problems and lack of strong advocacy are likely to multiply when we consider that successful initiatives will almost always be statewide and thus cover multiple IOU territories. Each PA that administers a market transformation initiative will have to coordinate with *multiple* PAs, each with different priorities. In this situation, market transformation initiatives could easily receive indifferent support or even be handicapped by PAs that prioritize other goals.

In contrast, a single authority will have a clear mission to promote market transformation. A single MTA will still need to coordinate with the various other PA programs that intersect with the market transformation initiative but will do so from a position of autonomy and with an organizational focus on long-term market transformation goals. A single MTA is more likely to behave as the strong advocates that market transformation initiatives will need to successfully execute a multi-year effort involving cooperation among multiple stakeholders.

We therefore urge the Commission to adopt the single MTA model.

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 Commission should adopt Option 2 regarding cost-effectiveness thresholds, which would require that prospective market transformation initiatives meet a 1.5 total resource cost (TRC) threshold.[5] As noted in the MTWG Report (pages A-47 to A-48), accounting rules for market transformation initiatives will allow a share of future codes and standards (C&S) savings to be attributed to the market transformation initiative.[6] Therefore, it is reasonable to use a threshold that is moderately higher than the threshold that the Commission has adopted for the EE portfolios, which excludes codes and standards of resource programs from forecast cost-effectiveness calculations.[7]

Furthermore, market transformation initiatives are long-term projects that pursue a more indirect, and thus more uncertain path to reduce energy use. It is likely that some initiatives will be scaled back or withdrawn at various stage-gates after some costs have been sunk, without delivering savings. Others will continue to completion, but not deliver the anticipated savings, perhaps because other products or technologies have become available that quickly make the adopted technology obsolete. A 1.5 TRC forecast threshold provides a reasonable hedge against this additional uncertainty and ensures that the MTA pursues only projects with larger potential pay-offs.

5. ***To what extent can current cost-effectiveness tools and methods fully evaluate market transformation initiatives that would result in codes and/or standards? If current methods are insufficient, please comment on the two options outlined on page 35 of Attachment A and include any other recommendations on this topic.***

The Public Advocates Office has no comment on this issue at this time.

6. ***Should a budget allocation to market transformation be incremental to the rolling portfolio budgets, or should a portion of the energy efficiency rolling portfolio budgets be redirected to market transformation? Why?***

The Public Advocates Office is agnostic regarding the question of whether budgets should be incremental to the rolling portfolio budgets or use unused funds from

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[5] Option 2 was supported by the Coalition for Energy Efficiency, CodeCycle, San Diego Gas & Electric, SoCalGas, and Southern California Edison in addition to the Public Advocates Office.

[6] MTWG Report, pp. A-47 to A-48.

[7] The Commission has adopted an approval threshold of 1.0 TRC benefit-cost ratio on a forecast basis for the ramp years of 2019 to 2022, and a mandatory threshold of 1.25 starting in 2023. See D.18-05-041, pp. 133, 176-177 (Conclusion of Law 36-37), and 181 (Conclusion of Law 75).

the rolling portfolio budgets. Some utility PAs currently have significant unspent funds in their annual budgets that could be redirected to market transformation initiatives, while others appear to have less flexibility. Redirecting unspent funds to market transformation initiatives may limit the need for incremental cost recovery from ratepayers, but may not be feasible for some PAs, leading to inconsistency and reduced transparency and comparability across utility PAs. Incremental budget allocations for market transformation would require new cost recovery from ratepayers but would be offset by returning unspent rolling portfolio funds to ratepayers.

Regardless of the budget mechanics the Commission ultimately selects, the Commission should ensure that market transformation budgets allocations are not subject to discretionary control by utility PAs. The MTA's budget should be outside of utility control, consistent with the single statewide administration model that we advocate for above.

In addition, market transformation budgets and savings that are not attributable to utility PAs' activities should not be included in utility portfolio savings and cost-effectiveness forecasts. Doing so would create significant risk of allowing short-term utility portfolio goals and requirements to undermine the long-term investments necessary for successful market transformation initiatives.

7. How much should the initial funding allocation be for market transformation, and for what duration?

The Commission's treatment of pilot projects provides some guidance for how early-stage market transformation initiatives should be budgeted. Pilot projects typically have limited budgets, to limit the risk in case of failure.[8] The Public Advocates Office bases its recommended budget on each market transformation initiative having a budget of approximately $4 million annually during the initial authorization period. This is a

[8] For example, Southern California Edison (SCE) recently proposed a Market-Based Incentive pilot in energy efficiency, with a budget of $4.75 million. The Commission also recently approved SCE's Clean Energy Optimization Pilot in A.18-05-015, which has a budget of $20.4 million over four years. See D.19-04-010, pp. 19-20.

reasonable level of spending that will allow the MTA to undertake several promising initiatives while managing the risks for ratepayers.

Currently, California has no experience implementing market transformation initiatives, and it is reasonable to expect that the administration model may affect the budget. Given the current uncertainty, the Public Advocates Office recommends that the Commission set an initial budget now and revisit the budget caps after three years.

At the beginning, a new MTA will require time to ramp up, including hiring skilled staff. In the first year, the core of the MTA's work will be scanning the market for opportunities. In the second year, the MTA should launch its first initiative. In the third year, the MTA may be able to launch a second initiative.

The following outlines the basis for the Public Advocates Office's budget recommendation for an initial three-year overall authorization:

- $3 million to $5 million annually for market-scanning and other core functions, or $12 million for three years.
- $8 million for the first market transformation initiative ($4 million in year 2 and $4 million in year 3)
- $4 million for the second market transformation initiative (all in year 3).

The Public Advocates Office, therefore, recommends that the MTA's total budget should not exceed approximately $24 million over the first three years. Through its ABAL submissions, the MTA may reallocate these funds to different years or functions, while abiding by the overall not-to-exceed cap, as recommended in the MTWG Report.

8. ***How should the coordination between resource programs and market transformation initiatives be managed?***

    a. ***Would a cooperation agreement between market transformation initiatives and resource programs be useful?***
    b. ***What should be the required and modifiable terms of such an agreement?***

The Public Advocates Office has no comment on this issue at this time.

9. ***Once a market transformation initiative is approved, what should be the process for updating or amending key terms (e.g., metrics, milestones, targets, schedules, and savings methodologies) during implementation?***

After the Commission approves a full-scale market transformation initiative after the second stage-gate, the MTA should discuss any proposed changes to key terms with the Market Transformation Advisory Board (MTAB) and submit an advice letter to the Commission for approval of those changes. The Commission should authorize a process similar to the stage gate process proposed in the Report, in which the tier of the advice letter (1 or 2) would depend on whether or not the MTAB reached a consensus recommendation supporting approval of the proposed changes.

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

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

b. What should the process be to determine if a market transformation initiative with questionable performance should be amended or terminated?

If a market transformation initiative begins to perform poorly, the MTA should discuss the situation with the MTAB and decide on a course of action. If the MTA concludes that the program needs to be amended or terminated, it can file a Tier 2 advice letter with the Commission proposing amendments or termination.

In addition, the Annual Budget Advice Letter (ABAL) associated with each market transformation initiative provides an opportunity for the Commission to examine the success of all current market transformation initiatives. If the Commission discovers problems, it should modify or terminate market transformation initiatives as necessary to achieve its objectives.

The Commission should make explicit in the market transformation decision that poor performance is a ground for parties to protest the ABAL submissions in addition to the standard grounds for protest outlined in General Order 96-B. This will enable MTAB members and other stakeholders to bring potential issues to the Commission's attention and propose remedies, supporting meaningful oversight of market transformation initiatives. Additionally, the Commission should permit parties to file a motion to review the performance of a market transformation initiative in a formal proceeding.

11. ***The MTWG report references "financial commitments to the target market(s)" (see page 17) and a market transformation plan that "solidifies a commitment to the market and relevant actors" (page 18). What kinds of commitments should a market transformation initiative make to the market(s) and market actors? What kinds of commitments are not appropriate, if any?***

The Commission should clarify that an MTA cannot make commitments to the market or to other organizations that obligate the Commission to approve future funding. The Commission has an obligation to ensure that ratepayer funds are reasonably and prudently spent and must retain ultimate authority over ratepayer funds.

For example, it would not be unusual for an MTA to join a coalition with PAs and MTAs from other states as part of an effort to transform national markets. While such coalitions may be useful and provide efforts with scale, California's MTA cannot make financial commitments to coalition partners or to other market actors that require additional ratepayer funds before seeking and receiving authorization from the Commission. It would inappropriate – and likely statutorily impermissible – for an MTA to make financial commitments that have not been explicitly authorized by the Commission.

12. ***Are there other issues not addressed in Attachment A that the Commission should consider as part of its decision establishing a framework for energy efficiency market transformation?***

Market Transformation and Decarbonization:

There is the potential that some measures, particularly those involving heat-pumps, may be funded both within the market transformation framework developed in this proceeding and the building decarbonization framework developed in Rulemaking (R.)19-01-011. Should this happen there is considerable risk that the benefits of these measures could be paid for and/or credited twice, with energy savings being attributed to the energy efficiency market transformation initiative while the reduction in carbon linked to those energy savings is credited to the decarbonization program.

The Commission should address the potential overlaps between energy efficiency and decarbonization measures to ensure that ratepayers do not double-pay for the same measures and that savings are not counted twice.

<u>Clarify Accounting Rules for Attributing Savings to Market Transformation, Resource Programs, and Codes & Standards Programs.</u>

The Commission should clarify rules regarding how the savings associated with market transformation initiatives are divided up between different programs, including the market transformation initiative itself, any resource programs that support the initiative, decarbonization programs, and code and standards advocacy programs that help move the measures included in the initiative into code. While it is acceptable to include all savings when considering the accomplishments of the market transformation initiative in isolation, these savings will need to be parsed appropriately between the various component programs to ensure that they are not double or even triple-counted.

<u>Future Refinement of the Market Transformation Framework</u>

It is difficult to foresee all the potential issues that might arise in developing and implementing a new policy framework for something as complicated as market transformation. Therefore, the Commission should evaluate this framework in three years to address any issues that might be discovered through the early application of this framework. The evaluation should include a report on early implementation experience, a public workshop, and a ruling providing parties the opportunity to comment and recommend changes to the framework.

III. CONCLUSION

The Public Advocates Office respectfully requests that the Commission adopt the recommendations contained herein.

Respectfully submitted,

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