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COMMENTS OF THE PUBLIC ADVOCATES OFFICE ON ADMINISTRATIVE LAW JUDGE'S RULING SEEKING COMMENTS ON FUTURE OF REGIONAL ENERGY NETWORKS

ALEXANDER COLE
HENRY BURTON
Analyst

Public Advocates Office
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-2480
Email: alexander.Cole@cpuc.ca.gov

CHRIS CLAY
Attorney

Public Advocates Office
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-1123
Email: christopher.clay@cpuc.ca.gov

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I. INTRODUCTION

Pursuant to the *Administrative Law Judge's Ruling Seeking Comment on Future of Regional Energy Networks* (ALJ Ruling) issued on March 27, 2019, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits these comments on the ALJ Ruling.

In these comments, the Public Advocates Office makes the following recommendations:

- The California Public Utilities Commission (Commission) must ensure that the statewide energy efficiency portfolio which encompasses all program administrators (PAs), is cost-effective.
- The state's approach to energy efficiency implementation has changed since 2012 and the Commission should evaluate whether and to what extent the Regional Energy Networks fit into the current framework.
- The Commission should update the rules governing Regional Energy Networks' participation in energy efficiency to harmonize with the market-based procurement structures adopted by the Commission in Decision (D.) 16-08-019 and refined in D.18-05-041.

II. BACKGROUND

In D.12-05-015, the Commission authorized local governments to submit program implementation plans and budgets to administer regional energy efficiency pilots. The Commission invited local governments to submit applications for the 2013-2014 funding cycle.[1]

The Commission noted in D.12-05-015 that local governments had built up substantial capacity as energy efficiency program implementers and administrators through funding received under the American Recovery and Reinvestment Act.[2] The Commission anticipated that approved pilots in the 2013-2014 period would "lead to a series of lessons learned on the appropriate level of local government administration of ratepayer-funded

[1] D.12-05-015, p. 149.

[2] D.12-05-015, p. 147.

energy efficiency programs"[3] and directed Commission staff to "conduct and/or oversee the evaluation of any pilots selected, consistent with the process set forth for evaluation of [investor-owned utility] programs."[4]

The key objective of the regional pilots was "to determine if local governments are in a position to plan and administer energy efficiency programs absent utility support or intervention."[5] Additionally, the Commission directed local governments to file pilots that would demonstrate the ability of regional entities to:

- Leverage additional state and federal resources so that energy efficiency programs are offered at lower costs to ratepayers;
- Address the water/energy nexus;
- Develop and deploy new and existing technologies;
- Address workforce training issues; and
- Address hard-to-reach customer segments such as low to moderate residential households and small to medium sized businesses.[6]

The Commission approved two Regional Energy Network (REN) proposals in the subsequent 2013-2014 budget decision (D.12-11-015). In that decision, the Commission further elaborated on the justification for the RENs and the areas in which they should administer their pilots. The RENs were to design programs addressing:

- Activities that the four investor-owned utilities (IOUs) cannot or do not intend to undertake;
- Pilot activities for which there is no current utility program offering and where there is potential for scalability to a broader geographic reach, if successful; or
- Pilot activities in hard-to-reach markets, whether or not there is a current utility program that may overlap.[7]

[3] D.12-05-015, p. 148.

[4] D.12-05-015, p. 150.

[5] D.12-05-015, p. 149.

[6] D.12-05-015, p. 150.

[7] D.12-11-015, p. 17.

In D.16-08-019, the Commission reaffirmed that the RENs are pilots that "would not be automatically renewed" for future funding.[8] The Commission "encourage[d] RENs to be involved in programs where they have special expertise or relationships with customers that other administrators … or local government partnerships do not" and "encourage[d] RENs to manage their programs with an eye toward long-term cost-effectiveness," like other program administrators.[9] The Commission directed the RENs to propose portfolios in the rolling portfolio business plan process.[10]

In Application (A.) 17-01-013 et al., the energy efficiency business plans proceeding, three RENs filed business plans: Bay Area Regional Energy Network (BayREN), Southern California Regional Energy Network (SoCalREN), and Tri-County Regional Energy Network (3C-REN).[11]

In D.18-05-041, the Commission found it reasonable "to permit BayREN and SoCalREN to continue their existing energy efficiency activities" but to "defer consideration of certain substantially new or expanded REN activities or budgets until the Commission completes its review of BayREN and SoCalREN's success as REN pilots."[12] The Commission approved the business plans of BayREN and SoCalREN.[13] The Commission did not approve the budget proposed by 3C-REN, but authorized it to file an annual budget advice letter (ABAL).[14]

BayREN, SoCalREN, and 3C-REN each filed an ABAL on September 4, 2018. 3C-REN requested a total 2019 budget of $6.0 million.[15] BayREN requested a total 2019 budget

[8] D.16-08-019, p. 10.

[9] D.16-08-019, pp. 11-12.

[10] D.16-08-19, pp. 10-11.

[11] D.18-05-041, p. 4.

[12] D.18-05-041, p. 178 (Conclusions of Law 48-49).

[13] D.18-05-041, p. 188 (Ordering Paragraphs 28-29).

[14] D.18-05-041, p. 105-109, 149 and 178-179 (Conclusions of Law 55-56).

[15] 3C-REN 2019 Annual Budget Advice Letter (Advice Letter AL 2-E-G), September 4, 2018.

of $23.3 million.[16] SoCalREN requested a total 2019 budget of $21.0 million.[17,18] The Energy Division subsequently approved all three ABALs by non-standard disposition.

III. DISCUSSION

A. The Commission must ensure that the statewide energy efficiency portfolio, which encompasses all program administrators, is cost-effective.

1. The Commission has recognized its obligation to ensure that the statewide energy efficiency portfolio is cost-effective.

State statutes and longstanding Commission policy require ratepayer-funded energy efficiency portfolios to be cost-effective. Public Utilities Code section 381(b)(1) directs the Commission to allocate public purpose funds to "cost-effective energy efficiency and conservation activities."[19]

The Commission has interpreted P.U. Code section 381(b)(1) statute as applying at the portfolio level for each IOU program administrator, rather than applying to each program or measure. The Commission, therefore, requires each utility program administrator's energy efficiency portfolio be cost-effective at the portfolio level, both on an *ex ante* and an *ex post* basis.

D.12-11-015 set requirements for utility portfolios to ensure that the portfolios would achieve a Total Resource Cost (TRC) ratio of at least 1.0 on an evaluated basis.[20] D.18-05-041 reiterated that that the Commission requires each utility's energy efficiency portfolio to achieve a TRC ratio of 1.0 or greater on both a forecast and evaluated basis.[21]

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[16] BayREN 2019 Annual Budget Advice Letter (Advice Letter 9-E), September 4, 2018 and BayREN 2019 Annual Budget Advice Letter (Advice Letter 9-E-A), October 29, 2018.

[17] SoCalREN requested $21.1 million in its initial ABAL and revised this request to $21.0 million in its supplemental ABAL, submitted on October 26, 2018.

[18] SoCalREN 2019 Annual Budget Advice Letter (Advice Letter 8-E/8-G), September 4, 2018 and SoCalREN 2019 Supplemental Annual Budget Advice Letter (Advice Letter 8-E-A/8-G-A), October 26, 2018.

[19] Public Utilities Code section 381(b)(1).

[20] D.12-11-015, p. 99.

[21] D.18-05-041, pp. 161 (Findings of Fact 19-20), 168 (Finding of Fact 74), 176-177 (Conclusions of Law 36-37), and 185 (Ordering Paragraph 13).

Up to now, the Commission has not applied a cost-effectiveness requirement to RENs specifically. Instead, the Commission has treated the RENs as a component of the overall statewide energy efficiency portfolio, in keeping with their status as pilots. For example, in D.12-11-015, the Commission decided to treat RENs as "part of the larger portfolio that the Commission will approve."[22] Conclusion of Law 15 in D.12-11-015 states that, "[t]he Commission should consider the REN and [Marin Clean Energy] proposals in concert with the utility portfolios and approve an overall cost-effective portfolio in each utility service territory on behalf of its ratepayers."[23]

Since D.12-11-005, the Commission has maintained the position that REN programs do not have to be cost-effective but should be part of an overall portfolio that is cost-effective. D.18-05-041 declined to set a cost-effectiveness standard for RENs due to the "more limited scope of activities" in REN portfolios.[24]

This approach is viable, as long as the Commission exercises meaningful oversight of the cost-effectiveness of the statewide energy efficiency portfolio, encompassing all program administrators. Although the RENs' portfolios may not be cost-effective, they should be balanced out by surplus benefits from the utility portfolios in order to ensure that the full portfolio of ratepayer-funded programs is cost-effective.

In effect, the Commission has taken on the responsibility of an overarching portfolio administrator at the statewide level, finding that it is "the responsibility of the Commission to approve a portfolio, including both utility and REN proposals, that is cost-effective overall."[25] The Commission must fulfill this responsibility by examining the statewide energy efficiency portfolio comprehensively and ensuring that it is cost-effective.

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[22] D.12-11-015, p. 18. The Commission decided not to apply a specific cost-effectiveness threshold to RENs, because RENs "cannot make the cost-effectiveness tradeoffs … within their own portfolios."

[23] D.12-11-015, p. 119 (Conclusion of Law 15).

[24] D.18-05-041, p. 95.

[25] D.12-11-015, p. 18.

2. There is diminishing space for programs that do not yield net benefits.

In recent years, energy efficiency program administrators have struggled to achieve a cost-effective portfolio. This is due in large part to the success of energy efficiency codes and standards. Measures that were once mainstays of the energy efficiency incentive programs, such as residential lighting, are becoming or have become code or standard requirements. As a result, there is little potential for incentive programs to realize energy savings beyond the standard practice baseline in these areas.

The low cost-effectiveness of the statewide energy efficiency portfolio in recent years leaves limited space for programs with a TRC below 1.0. If the utility portfolios achieve TRC ratios above 1.0, the net benefits from those portfolios can subsidize pilot programs such as the RENs. However, since the utility portfolios are now below a 1.0 TRC ratio or only marginally above it, there is little headroom in the statewide portfolio to cover activities with low cost-effectiveness.

Given that the utility portfolios are not achieving a TRC ratio of 1.0,[26,27] the Commission should evaluate whether it can continue to fund other program administrators that have portfolio TRC ratios well below 1.0. If the Commission authorizes some portfolios that are marginally cost-effective and some portfolios that are well below 1.0, then the statewide energy efficiency portfolio will have negative net benefits. This would be a burden on ratepayers and would not comply with Public Utilities Code section 381(b)(1).[28]

3. Energy efficiency portfolios have failed to reach forecasted energy savings and have not been cost-effective.

Since 2016, the statewide energy efficiency portfolio has failed to achieve cost-effectiveness each year, on a reported (or claimed) basis. The program administrators'

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[26] D.18-05-041, pp. 66, 132-137, 176 (Conclusion of Law 36), and 181 (Conclusion of Law 75).

[27] The Commission uses a dual test, requiring energy efficiency portfolios to be cost-effective on both the Program Administrator Cost test and the Total Resource Cost test. In practice, the TRC test is always the binding constraint, since "PAC test estimates are in most cases higher than their corresponding TRC test estimates." See D.18-05-041, pp. 53-54.

[28] Public Utilities Code section 381(b) says: "The Commission shall allocate [public purpose] funds … [to] cost-effective energy efficiency and conservation activities."

reported results show that the statewide portfolio had a TRC ratio of 0.85 in 2016, 0.97 in 2017, and 0.92 in 2018.[29] Looking only at the utility program administrators' portfolios shows slightly better results. Still, on a claimed (non-evaluated) basis, the combined portfolios of the utilities were marginally cost-effective only in 2017 and were not cost-effective in either 2016 or 2018.

The cost-effectiveness of the portfolios is likely to decline further when programs are evaluated: over many years, impact evaluations have consistently found lower benefits than program administrators' claims (see the comparison in Appendix A).

Table 1: Cost-Effectiveness Ratios of Energy Efficiency Program Administrators				
Total Resource Cost (TRC) Ratios of Claimed Results, Excluding Codes & Standards but Including Market Effects				
Program Administrator (PA)	2013-2015	2016	2017	2018
	Evaluated	Reported		
Statewide Portfolio (All PAs combined)	0.86	0.85	0.97	0.92
Combined Utility PAs	Not available	0.88	1.00	0.95
PG&E	0.97	0.79	0.87	0.69
SCE	0.82	1.00	1.01	1.16
SDG&E	0.74	0.96	1.46	1.38
SoCalGas	0.89	0.74	0.81	0.97
Marin Clean Energy (MCE)	0.48	0.27	0.65	0.31
BayREN	0.35	0.37	0.40	0.34
SoCalREN	0.04	0.05	0.31	0.11
Sources: *2013-2015 EE Evaluation Report;*[30] *California Energy Data and Reporting System (CEDARS), Statewide Claims Summaries for 2016-2018.*[31]				

The results in Table 1 show that the statewide energy efficiency portfolio has not been cost-effective on an evaluated basis since 2012.[32] The utilities' portfolios did not produce

[29] See Table 1 above.

[30] 2010-2012 Energy Efficiency Annual Progress Evaluation Report, California Public Utilities Commission, March 2015 (2010-2012 EE Evaluation Report), Appendix D, p. D-5 (Table D-3). Available at http://www.cpuc.ca.gov/General.aspx?id=6391.

[31] California Energy Data and Reporting System (CEDARS), Claims Dashboard, Statewide Claims Summaries for 2016-2018, accessed April 11, 2019.

[32] Evaluated results are not yet available for 2016-2018. However, because evaluated savings and cost-effectiveness results are consistently lower than reported (claimed) values and the reported values for

significant net benefits in any of these years, and only SCE and SDG&E had any net benefits in any year. Meanwhile, the RENs and MCE have delivered energy efficiency portfolios with TRC ratios well below 1.0 (see Table 1).

This data shows that there is diminished space in the statewide energy efficiency portfolio for programs or portfolios with cost-effectiveness ratios well below 1.0. For the Commission to meet its responsibility to ensure that ratepayer funds are dedicated to cost-effective energy efficiency activities, the Commission must consider whether it remains feasible and appropriate to continue to authorize funding for REN portfolios that have never exceeded a TRC ratio of 0.40. The Commission should also take action to improve the cost-effectiveness of the utility portfolios.

B. The state's approach to energy efficiency implementation has changed since 2012 and the Commission should evaluate whether and to what extent the RENs fit into the current framework.

The Commission approved the REN pilots and the RENs' program administrator role in 2012, at a time when the utilities both designed portfolios and managed programs. At the time, utilities designed the vast majority of programs, which were either implemented by in-house staff, outsourced to third party implementers, or some combination of the two.

The utilities' tight control of the portfolios at that time provides the context for the Commission's decision in D.12-11-005 to designate the RENs as program administrators, rather than to simply integrate REN activities into the utilities' portfolios as third-party implementers or local-government programs (LGPs). In particular, the Commission was sensitive to complaints that the utilities were not providing a fair opportunity for local governments to participate in utility portfolios in ways that leveraged the strengths of the local governments:

> Had the utilities been proactive over the past several years and reached out to the local governments to create true partnerships that took advantage of the expertise and viewpoints of the local governments, perhaps the Commission would not have felt the need to step in to

2016-2018 are already below the Commission's 1.0 TRC threshold, there is little doubt that the 2016-2018 statewide portfolios will also be below 1.0 once they are evaluated.

> allow the REN proposals to be submitted directly and the RENs could indeed have been satisfied with being part of the utility portfolios. Perhaps that goal can be achieved in the future. But for now, RENs are distinguishable from other LGPs by the fact that they are selected by the Commission instead of the utilities.[33]

To address the concern that the utilities underutilized the expertise and viewpoints of local government actors, the Commission enabled the RENs to act as program administrators. Program administrator status gives the RENs the "independent ability, within the confines of the approvals of their proposals granted by the Commission, to deliver and oversee their own programs independently, without utility interference or direction as it relates to the design and delivery of their programs."[34]

Since 2012, the Commission has changed its approach to the design and implementation of energy efficiency portfolios. As a result, the situation that the Commission addressed in its 2012 decision approving RENs has changed substantially.

The current procurement structure for energy efficiency is quite different. In D.16-08-022[35] and D.18-01-004,[36] the Commission adopted a new approach to procuring energy efficiency in which the utilities administer energy efficiency portfolios that comply with Commission goals, but solicit third-parties to design and implement programs to meet the broad goals laid out in their portfolios. The Commission has directed utilities to rely on open and competitive procurement processes, overseen by an independent evaluator and procurement review group. Program design, which the utilities previously controlled, is now the responsibility of the implementer proposing the program. The Commission's intention in adopting this new structure was to foster innovation while allowing for price discovery and to mobilize the distributed knowledge of market actors regarding energy efficiency opportunities.

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[33] D.12-11-015, pp. 8-9.

[34] D.12-11-015, p. 11.

[35] D.16-08-022, p. 111, Ordering Paragraphs 10-12. Also see discussion on pp. 69-75.

[36] D.18-01-004, pp. 61-62, Ordering Paragraphs 1-3. Also see discussion of the new procurement structure on pp. 27-39.

The change from a utility-centered procurement model to a new framework in which implementers are responsible for designing and developing programs, changes the context for considering REN programs and the unique contributions they can make to the energy efficiency portfolio. While the Commission originally tasked the RENs with proposing programs that the "the four investor-owned utilities (IOUs) cannot or do not intend to undertake,"[37] the Commission should now consider how the RENs as they currently participate in the energy efficiency portfolio interact with other market actors.

Going forward, the utilities' energy efficiency portfolios will be largely determined by what market actors in a competitive environment determine are economically viable ways of providing the benefits of energy efficiency. Allowing the RENs to continue to propose and implement programs outside of this market structure will reduce transparency, fragment the market, and may reduce participation in solicitations.

In the context of competitive energy efficiency procurement, overlapping, non-competitive REN program administration and implementation creates substantial risks to identification and procurement of a least-cost, best-fit portfolio of energy efficiency programs.

1. Non-competitive procurement undermines identification of the most efficient uses of ratepayer funds.

Allowing the RENs to propose and implement programs outside of the market structure does not afford the Commission or PRG members an opportunity to understand how the RENs may offer the best value in terms of energy savings for the money spent. Implementers bidding within a competitive market framework will need to identify the most effective uses of energy efficiency dollars in order to have their bids selected within a competitive bidding environment.

[37] D.12-11-015, p. 17.

2. Overlapping program administration and implementation responsibilities create uncertainty for program implementers bidding into solicitations.

In a solicitation process, program administrators and implementers require up-to-date information on the potential market for proposed interventions in order to accurately forecast potential energy savings, cost, and optimal program design. The presence of multiple program administrators with overlapping territories such as utilities and RENs increases uncertainty about how utilities will manage situations where implementers propose programs that overlap with REN programs. In areas of potential overlap, implementers may be uncertain whether overlapping or competing programs are permissible or excluded. In cases where overlap is permissible, implementers may still be uncertain as to whether their proposals will be at a disadvantage in the bid scoring due to market overlap. Additionally, it may be unclear exactly how different a bidders' proposal must be from a REN program in order to be considered.

As program administrators, RENs also have broad discretion to alter their program offerings when and how they see fit. For third-party bidders who wish to propose a certain type of energy efficiency program, there is uncertainty about exactly what programs the RENs may choose to offer in the same geographical area during the term of the contract.

3. The RENs' presence in the energy efficiency marketplace may limit the number of customers available to third-party implementers.

Where RENs are offering a particular type of program, a third-party implementer may face restrictions in serving the same market segment or diminished market potential. By reducing the potential scale of third-party program implementation, overlap with the RENs may limit the potential impact of promising and successful energy efficiency programs, while also reducing the potential profitability for third-party bidders.

Allowing the RENs to pre-empt the market deprives the Commission and ratepayers of the opportunity to search for other implementers who might offer better program ideas, better prices, or both. Pre-emption weakens the competitive market for innovative, impactful, and cost-effective energy efficiency solutions. This will produce a less optimal energy efficiency portfolio.

C. The Commission should update the rules governing RENs' participation in energy efficiency to harmonize with the market-based procurement structures adopted by the Commission in D.16-08-019 and refined in D.18-05-041.

To address the problem described in Section B above, the Commission should require RENs to bid as many of their proposed programs into the utilities' competitive solicitations as possible, with appropriate participation of the Procurement Review Groups and independent evaluators.

The Commission should direct RENs to bid programs into competitive solicitations wherever feasible. D.16-08-019 established a rebuttable presumption that utilities would bid programs out to market unless the utilities could demonstrate that direct utility implementation was superior.[38] The Commission should establish an analogous rebuttable presumption for REN programs, requiring the RENs to bid all programs into the appropriate local utility or statewide solicitation unless the REN makes a compelling showing that:

(a) The proposed program does not fit within any planned solicitation.

(b) The program will provide substantial value to the energy efficiency portfolio.

(c) The REN has unique capabilities to offer the program and would create value that would not otherwise be realized;

The RENs should submit business plans to the Commission to seek approval for the activities they propose to directly administer. The plans should describe the non-competitive programs the REN proposes and justify their administration of these programs according to the three-part test above.

There are several benefits to requiring the RENs to compete with other market actors in a competitive bidding environment. Participation in competitive markets will require that the RENs identify those areas where they truly provide unique value to the energy efficiency portfolio. When RENs can offer something other market actors cannot, they are likely to do well in competitive solicitations and win contracts. The solicitation process will mobilize RENs' knowledge, insights and capabilities towards unlocking energy efficiency resources,

[38] D.16-08-019, p. 105, Conclusion of Law 58.

as D.12-11-015 intended. Through competition with other providers, solicitations will also identify areas where RENs' insights and capabilities are truly unique and provide ratepayer value.

Where multiple program administrators have the capacity to administer a particular type of program, the Commission should assign the function to the program administrator most competent in that specific area. This could be a REN, a Community Choice Aggregator (CCA), or a utility. As needed, the Commission should ask program administrators and other stakeholders to provide input and evidence about the competence of different program administrators or potential program administrators to administer the program type in question. All else equal, the Commission should choose implementers who can work within pay-for-performance contracts in order to maximize value per ratepayer dollar expended and to allocate risk to actors with the greatest ability to manage and mitigate that risk.

IV. RESPONSES TO ALJ RULING QUESTIONS

1. Threshold REN Policy. Are RENs still appropriate (new or existing) in light of likely geographic overlap, and/or portfolio overlap, with CCAs and LGPs? Why or why not? What unique value do RENs bring, if any, compared to CCA or LGP programs?

The geographic overlap of different organizations such as utilities, CCAs and local government programs (LGPs) creates complications in the administration and oversight of the energy efficiency portfolios. It raises the complexity of program design for third-party bidders by making it challenging to determine the potential scale and geographic scope of third-party programs. It may also confuse consumers who could have multiple organizations providing similar program offerings within the same geographic space.

In the discussion above, the Public Advocates Office has outlined some simple organizing principles to bring coherence to the statewide energy efficiency portfolio and to define the role of RENs within it. Under the Public Advocates Office's proposed framework, the RENs would continue to administer those elements of the energy efficiency portfolio where they could demonstrate unique value linked to their status and competences as regional government actors. Like LGPs, they could also propose other programs as

implementers and bid into competitive solicitations. The bidding process would require the RENs to demonstrate the value of their proposal to the overall energy efficiency portfolio.

2. Existing REN policy. Should the Commission consider cancelling REN programs after the expiration of the current business plan period? Why or why not?

Once the Commission adopts a new policy framework for RENs, it should direct the RENs to file new business plans that comport with the updated policy framework. The new business plans should describe and justify the activities that RENs propose to administer directly.

The Commission should direct RENs to file business plans within six months of the adoption of a decision. Since the RENs are not eligible to file applications, they should file business plans in this rulemaking proceeding. The business plans would be strategy and policy documents: they would identify the program types that a REN would offer, the market segments that the REN would serve, the high-level budgets, and the estimated energy savings. In approving a REN's business plan, the Commission would then authorize the REN to file an annual budget advice letter (ABAL) for subsequent years.

3. New REN policy. Should the Commission consider discontinuing the opportunity for formation of new RENs? Or should the Commission consider new REN proposals? Why or why not?

The Commission should only approve new RENs to the extent that they demonstrably provide new and unique value to the energy efficiency portfolio. Any new RENs should fit within the Commission's overall structure for energy efficiency, as described above, as well as the statutory requirements for cost-effectiveness and the Commission's obligation to ensure that the statewide portfolio is cost-effective. In addition, the Commission should authorize new RENs only after evaluating the existing RENs and finding that the REN model is demonstrably successful.

This approach is consistent with the Commission's past findings and policy decisions. In D.16-08-019, the Commission said that it was appropriate to evaluate the RENs before

expanding them.[39] In D.18-05-041, the Commission found it premature to authorize new REN activities until the Commission had evaluated the success of the REN pilots.[40] The Commission authorized the continuation of REN activities in D.18-05-041 but did not authorize substantially new activities.[41]

4. Criteria for REN evaluation. Are the criteria adopted in D.12-11-015 and reaffirmed in D.16-08-019 still the appropriate criteria to apply to RENs and their programs? Or should new or different criteria be developed and applied?

The criteria adopted in D.12-11-015 and D.16-08-019 are no longer appropriate for evaluating many of the REN's programs because the Commission's overall structure for energy efficiency has changed. Those criteria were mainly designed to accomplish two things: (1) to ensure that the RENs were not duplicating the activities of the utilities and (2) to direct the RENs towards activities that were most in line with the core competencies of local government agencies.

Regarding duplication, going forward, the utilities will no longer directly control most of the programs in their portfolios. Thus, it is not necessary to steer the RENs away from the activities that utilities provide.

Regarding core competencies, the Commission and the utilities have a new method of identifying the competences of potential energy efficiency implementers and selecting providers of energy efficiency programs. The solicitation-based or market-centered structure that the Commission adopted in D.16-08-019 and D.18-05-041 is based on the presumption that neither the utilities nor the Commission know *a priori* which program designs will be most effective at procuring energy efficiency or meeting other portfolio goals. Instead, it opens the door for market actors to design effective programs and then bid these into competitive solicitations.

[39] D.16-08-019, pp. 11-12 and 98 (Conclusions of Law 1-3).

[40] D.18-05-041, pp. 97-99 and 178 (Conclusion of Law 49).

[41] D.18-05-041, pp. 178 (Conclusions of Law 48-55) and 188 (Ordering Paragraphs 28-29).

To the extent possible Commission should ensure that RENs activities are harmonized with the competitive procurement structure currently used in energy efficiency. When feasible, REN programs should be bid into solicitations.

For REN proposals that can't be integrated within energy efficiency procurements, the Commission should apply the criteria applied in Section C above:

(a) The proposed program does not fit within any planned solicitation.

(b) The program will provide substantial value to the energy efficiency portfolio.

(c) The REN has unique capabilities to offer the program and would create value that would not otherwise be realized;

Based on these three criteria, the Commission can determine whether to approve the activity as part of the REN's business plan.

5. Application of REN criteria. Should REN programs be required to meet all of the criteria from D.12-11-015 and not just one? Why or why not?

Not applicable. See response to question 4 above.

6. New REN geography. Should the Commission consider proposals for formation of new RENs that overlap with existing or other new REN proposals? Why or why not?

Allowing multiple RENs to serve the same customers is likely to create confusion in program design, reduce transparency in competitive solicitations, and impede the implementation of effective programs. It may also create significant confusion among customers. To minimize complexity and confusion for both implementers and customers and to simplify the regulatory task of ensuring that the energy efficiency portfolio is meeting all of the Commission's goals cost-effectively, the Commission should not approve RENs with geographical overlap unless there is a compelling justification, a plan to mitigate complexity and confusion, and evidence to support the likely success of the proposed interventions.

7. New REN timing. If you recommend that the Commission consider formation of new RENs, when during the rolling portfolio cycle should such proposals be considered?

Any new REN that seeks to administer energy efficiency programs should file a business plan in this rulemaking or its successor (as described in response to question 2 above) after the Commission adopts a new policy framework for RENs. At that point, the Commission should seek stakeholder input on the business plan, evaluate whether the proposed REN will provide new and unique value to the statewide energy efficiency portfolio, and evaluate whether the proposed REN will contribute to a balanced and cost-effective statewide portfolio. Based on these considerations, the Commission should decide whether to approve the proposal.

If the Commission approves the formation of new RENs, the timing must allow all program administrators operating in the same geographic area to develop joint cooperation agreements and to coordinate their annual budget advice letters. For this to work, the Commission would need to adopt a decision on a new REN by April 1 in any given year. This would allow all program administrators to sign joint cooperation agreements by June 1, present draft ABALs to the California Energy Efficiency Coordinating Committee (CAEECC) by August 1 and submit final ABALs by September 1.

This approach and schedule for considering new REN proposals is consistent with the Commission's past determination that REN proposals "should be coordinated with the sector business planning process of all other program administrators" and should be vetted by stakeholders through the CAEECC.[42]

[42] D.16-08-019, p. 99 (Conclusions of Law 6-7).

8. REN sector limitations. Should RENs be limited to delivering programs in specific sectors (e.g., the public sector, or multi-family buildings) or to specific populations (e.g., hard-to-reach communities)? Explain your rationale.

In general, RENs should bid into competitive solicitations. If RENs have a comparative advantage in serving specific sectors or customer groups, their strengths will be revealed in the solicitation process and they will be likely to win.

If a REN seeks to run a program outside of a competitive solicitation, the REN should seek Commission authorization and justify its proposal. The REN should demonstrate the value of the proposed program to the energy efficiency portfolio and demonstrate that it is uniquely capable of running the proposed program.

9. REN program types. Should RENs be limited to offering certain types of programs only (e.g., non-resource programs or resource programs)?

See response to question 8.

10. Cost-effectiveness requirements. Should RENs be required to meet a certain cost-effectiveness threshold in order to be approved or continued? If so, what level, and why?

As noted in Section A above, the Commission has identified its statutory responsibility to ensure that the statewide energy efficiency portfolio is cost-effective. The Commission has determined that this requires cost-effectiveness ratios of 1.25[43] on the TRC and Program Administrator Cost (PAC) tests on a forecast basis and 1.0 an evaluated basis.

The Commission can operationalize this in one of two ways. The first option (the current approach) is for the Commission to shoulder the statutory responsibility for ensuring the cost-effectiveness of the statewide energy efficiency portfolio, encompassing all program administrators. In this approach, the Commission does not apply a cost-effectiveness threshold to the RENs. Instead, it seeks to ensure that the utility portfolios have TRC ratios significantly above 1, so that the net benefits of the utility portfolios can cover the costs of

[43] The Commission determined in D.18-05-041 that program administrators would only need to meet a forecast threshold of 1.0 on a forecast basis during a "ramp" period through 2022. The Public Advocates Office has filed an Application for Rehearing on this matter.

the REN portfolios. Unfortunately, using this approach has resulted in statewide portfolios that have not met statutory requirements since 2012, as shown in Section A above.

Alternatively, the Commission can require every energy efficiency program administrator – including RENs – to develop and maintain a cost-effective portfolio.

11. REN evaluations. Are there specific studies that the Commission should undertake to more directly evaluate the effectiveness of the REN programs thus far? Please describe.

The Commission does not need to wait for evaluation results to make appropriate policy adjustments to harmonize the RENs with the current energy efficiency structure that relies on competitive solicitations. These adjustments are not dependent on the results of any evaluation. Instead, they are derived from the need to create a coherent institutional structure for procuring energy efficiency and from considerations of how the RENs can best contribute their unique know-how and organizational competences to the energy efficiency portfolio.

However, the Commission should conduct an impact evaluation of BayREN, SoCalREN, and 3C-REN's resource and non-resource programs before considering any expansion of the REN pilots or the approval of new RENs. The Commission approved the RENs as pilots and the Commission should use the existing pilot programs to inform and improve future REN activity. The Commission should examine how the RENs have used ratepayer funds, whether the pilots have been effective, and whether this institutional model is a success. Evaluating the RENs is particularly important in light of the substantial budgets of REN programs, which currently account for approximately $50 million of ratepayer energy efficiency spending annually.[44]

The evaluation of the RENs' resource programs should examine traditional impact evaluation questions, including focus on whether they are delivering cost-effective energy efficiency. Additionally, the evaluation should examine how REN programs compare to other, similar offerings by the utilities.

[44] These are substantial expenditures for demand-side pilots. For perspective, the Demand Response Auction Mechanism pilot has expended a total of $63 million over four years. The budgets for existing REN pilots for the next four years are over $200 million.

V. CONCLUSION

The Public Advocates Office appreciates the opportunity to file comments in this matter and requests that the Commission adopt the recommendations contained herein.

Respectfully Submitted,

/s/ CHRIS CLAY

Chris Clay
Attorney

Public Advocates Office
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-1123
Email: christopher.clay@cpuc.ca.gov

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Appendix A

Comparison of Reported and Evaluated Cost-Effectiveness of Energy Efficiency Portfolios					
Total Resource Cost (TRC) Ratio, Excluding Codes & Standards					
Program Administrator	**2010-2012 Cycle[45]**			**2013-2015 Cycle[46]**	
	Reported TRC	Evaluated TRC		Reported TRC	Evaluated TRC
Statewide Portfolio (All PAs)	1.43	1.04		1.14	0.86
PG&E	1.45	1.23		1.34	0.97
SCE	1.51	1.12		1.00	0.82
SDG&E	1.27	0.89		0.90	0.74
SoCalGas	1.21	1.32		1.06	0.89
MCE	NA	NA		0.47	0.48
BayREN	NA	NA		0.53	0.35
SoCalREN	NA	NA		0.10	0.04
Source: *2010-2012 and 2013-2015 EE Evaluation Reports*					

[45] 2010-2012 Energy Efficiency Annual Progress Evaluation Report, California Public Utilities Commission, March 2015 (2010-2012 EE Evaluation Report), Appendix D, p. D-5 (Table D-3). Available at http://www.cpuc.ca.gov/General.aspx?id=6391.

[46] Energy Efficiency Portfolio Report, California Public Utilities Commission, May 2018 (2013-2015 EE Evaluation Report), Appendix D, p. 132. Available at http://www.cpuc.ca.gov/General.aspx?id=5080.