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**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 CODECYCLE LLC ON
ADMINISTRATIVE LAW JUDGE'S RULING SEEKING COMMENT
ON FUTURE OF REGIONAL ENERGY NETWORKS**

Dated: April 16, 2019

Dan Suyeyasu
Director
CodeCycle LLC
5290 College Ave, Unit C
Oakland, CA 94618
(510) 410-2457
dan.suyeyasu@codecycle.com

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I. Introduction

CodeCycle respectfully submits the following comments in response to the “Administrative Law Judge’s Ruling Seeking Comment on Future of Regional Energy Networks” (ALJ Ruling) of March 27, 2019.

CodeCycle is a third-party implementer focused on making the challenges of Title 24 enforcement more manageable for California’s building departments. Building departments presently face a herculean task in checking Title 24 compliance using – essentially – only analog systems. Imagine, if you will, the IRS without a computer system; that is the challenge faced by building departments today. Building department staff are responsible, at the same time, for a significant part of gas line safety, electrical distribution safety, and fire safety issues (amongst many other public safety concerns).

The State of California can work with stakeholders to improve this predicament, but only if the team involved in the solution is willing to work directly with building departments to provide them with better solutions. The CPUC’s approval of RENs has been a game-changer in this regard, as the RENs have shown an ability to work with local governments in ways that the

IOUs have been unwilling to do. The REN experiment is working and should be transitioned to become a permanent part of the portfolio.

Of course, as with anything new and complicated, adjustments to the REN rules may be prudent in some respects to tune the performance of the RENs and increase the overall benefits to ratepayers. One of the biggest challenges we observe, however, is not with the RENs themselves, but with the IOUs' response in needing to share space with other Program Administrators. Now that entities exist to purposefully fill the gaps in the IOU programs, it seems that the IOUs have responded strategically by limiting transparency on the types of programs that the IOUs will not or cannot deploy.

Because CodeCycle's immediate experience has mostly related to the RENs (BayREN in particular), our comments will focus on the RENs. We would support more CCAs following in the footsteps of MCE and Lancaster Choice Energy as Program Administrators, but the current building-side focus of most new CCAs would seem to focus on the dual objectives of building electrification and electric vehicle infrastructure deployment. Those are both highly defensible strategies for the CCAs to achieve community and State emission reduction goals, but that focus of most CCAs means that the primary entities responsible for filling the efficiency gaps in the IOU portfolio are likely to be the RENs for some time to come.

II. General Comments on Regional Energy Networks (RENs)

CodeCycle sees significant value in alternate Program Administrators within the portfolio, particularly how those Program Administrators can assist the energy efficiency work of local governments. The RENs provide unique value to California's ratepayers, with program offerings that are distinct from those of IOUs.

The CPUC noted, over six years ago in D.15-11-015, that the RENs could play a useful role in bringing forward new compliance improvement solutions for local building departments tasked with Title 24 enforcement. That logic has not changed: "Governments are responsible for building code compliance, and **IOUs are limited to somewhat of an arms-length interaction with those efforts.** This proposal appears to be an innovative attempt to improve code compliance and generate additional energy savings at the local level."¹

¹ D.15-11-015, at pg. 42. (emphasis added)

We note here, in advance of response to specific questions, an argument in favor of ongoing REN participation that has been less discussed in the initial years of REN and CCA work as Program Administrators.

Public Policy Should be Funded by Public Dollars: There has, no doubt, been significant success through the years driven by the IOU LGP programs. All things being equal, however, we would presume that most government agencies looking for support in developing and running government efficiency programs would prefer that the funding came through government channels, such as that provided by the RENs. When any entity takes funding to support a certain type of work, the recipient becomes beholden to the grantor. And that need to defer to the wishes of the grantor applies not only to the immediate work being funded, but can extend to any external interaction between the grantee and the grantor. In that way, the IOU funding of government initiatives has likely influenced the formation of local government policies at a local level in favor of the IOUs. Establishing parallel funding channels that operate through the RENs allows ratepayers to enjoy the benefits of effective, government-led efficiency policies without worry that the funding mechanism itself is somehow undermining the policy formation process.

III. Responses to Specific Questions

CodeCycle will provide comments on a subset of the questions presented in the ALJ Ruling.

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

CodeCycle believes that the RENs will continue to provide significant differentiation from both the CCAs and the LGPs. The majority of CCAs in California have not requested State efficiency funds: to date, only 2 out of the 19 existing CCAs are administering energy efficiency programs under direction from the CPUC.² The CCA building-side programs are generally more concerned with advancing decarbonization objectives through electrification than with bringing new programs forward in the traditional efficiency arena. While these are useful and complimentary activities carried out by the new CCAs, they fall outside the energy efficiency focus of this proceeding. There may be increasing geographic overlap between the CCAs and RENs, but there is not an obvious trend towards programmatic overlap at this time necessitating a rethinking in strategy by the CPUC.

² Marin Clean Energy applied to administer State efficiency funds in 2012. Lancaster Choice Energy elected to administer State efficiency funds in 2017. See D.14-01-033 (2014).

Also, as discussed above, LGPs are inherently subject to IOU rules, limitations, and influence. The RENs continue to provide a critical alternate funding path for efficiency programs led by local governments, where those programs can proceed without considering the overlapping and possibly competing interests of the Investor Owned Utility that is providing the funding.

2. Existing REN policy. Should the Commission consider cancelling REN programs after the expiration of their current business plan period?

CodeCycle recommends that the CPUC should continue to support the RENs at the conclusion of the current business plan period. The RENs provide valuable programs in their territories that the IOUs cannot or will not administer. For example, in the last CAEECC subcommittee meeting focused on Codes & Standards, the IOUs acknowledged that they continue to have limitations on the types of support that they can provide to the code enforcement process. At that meeting, the IOUs were asked if they would be able to procure automated third-party systems for assisting building departments with the enforcement process. An IOU representative responded, “The CEC just asked us to support them [the CEC] on the new repository, but we can’t touch the data side of the system as we can’t take on the responsibility for it [data management] so **we can only go so far.**”³

It would be extremely shortsighted for the State to focus all of its Title 24 Compliance Improvement efforts through the IOUs when those entities cannot manage the significant data necessary to assess and track compliance at the building department level. Even though the IOUs cannot directly assist a building department’s Title 24 enforcement effort through automation, the IOUs have acknowledged how central the enforcement side of the equation is to improving overall Title 24 compliance: “In addition, enforcement and education are most effective if conducted in parallel. A little enforcement goes a long way towards motivating industry practitioners to learn more about how to comply with regulations.”⁴

³ “Notes from Codes and Standards Stage 2 Subcommittee Meeting”, CAEECC, May 4, 2016. Referenced for the record in CodeCycle Reply Comments on Business Plans, October 13, 2017, pg. 2. (emphasis added)

⁴ Pat Eilert, PG&E, et al. “Standards Education and Training as a Resource Program”, ACEEE 2008, pg. 8-62.

The IOUs continue to emphasize their unique and specialized ability to implement energy efficiency programs because they alone retain so much relevant data on energy use in buildings.⁵ While that argument may have merit with respect to traditional efficiency programs, it also illustrates a significant gap in IOU funded compliance improvement efforts, since those programs cannot collect, analyze, and derive insights from real-time and longitudinal compliance data. Once again, the IOU position that “we can’t touch the data side of the system” is not a minor limitation given the overwhelming complexity of Title 24, whether analyzed on a single building level or at an aggregate level across California’s construction industry.

The RENs, in contrast, have no such internal limitations on providing data-driven solutions to building departments or on collecting and using aggregated data from those efforts to provide greater insights on the compliance improvement process. There are likely to be numerous other areas where the RENs can support local government efficiency operations that the IOUs cannot do. As a result, the CPUC’s support for the work of the RENs should continue beyond the current business plan period.

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?

For the reasons that CodeCycle supports the existing RENs, it seems that adding more RENs would be of net benefit to the State and to ratepayers. As an alternative to new REN proposals, the Commission could consider allowing existing RENs to undertake statewide programs when and if their locally administered programs show sufficient promise to extend beyond the immediate service area of a REN. This expansion would be particularly helpful in the subject matter areas where the IOUs cannot operate. For promising REN programs, this strategy could help the Commission achieve its efficiency objectives without growing the number of Program Administrators.

⁵ See, for example, IOU argument for an IOU managed market transformation program: “Existing PAs also . . . benefit from immediate access to Advanced Metering Infrastructure (AMI) data for every customer . . .” from “Administrative Law Judge’s Ruling Seeking Comment on Market Transformation Working Group Report” April 10, 2019, pg. A-30.

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 existing criteria for the RENs still seem appropriate and relevant today. It may be beneficial if Energy Division (ED) provided more guidance to the RENs on how the criteria should be weighted to balance their selection of programs.

The first criterion – focused on program areas that the IOUs cannot undertake – would also benefit from a more concerted effort to define what, exactly, are the gaps in the IOU program areas. For instance, CodeCycle has been told repeatedly by the IOUs of their limitations in directly supporting building department enforcement activities. Numerous other stakeholders have told us those IOU rules are clearly established. Yet those internal IOU rules on what types of programs they cannot run are not definitively published anywhere at this time. PG&E’s joint cooperation memo with BayREN would have been a clear place for PG&E to state that they cannot directly support building department Title 24 enforcement efforts, yet no such mention is made.⁶ If the RENs are expected to fill the gaps in the IOU portfolio, more transparency on the IOU internal policies creating such gaps would be valuable both to the RENs and to the CPUC in providing oversight to the process.

The Commission should consider asking the IOUs to more clearly delineate program areas that they cannot or will not do as a result of the IOUs’ own internal policies or priorities. This will help both the RENs and the CCAs in providing non-duplicative programs.

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

CodeCycle sees value in both the REN non-resource and resource programs. Notably, we think that some non-resource programs, such as compliance improvement, would benefit over time by shifting to resource program status. This would provide better data to a variety of stakeholders on the ratepayer benefits provided by such programs, and it would permit effective non-resource programs to possibly improve the cost-effectiveness of the REN portfolio (once such programs are evaluated). If the shift from non-resource to resource is to take place, the RENs must be permitted to offer both types of programs.

⁶ “PG&E and BayREN’s 2019 Joint Cooperation Memo in Compliance with Decision 18-05-041, Ordering Paragraph 38” August 1, 2018, pp.18-24.

IV. Conclusion

CodeCycle appreciates the CPUC's support of the RENs to date and thinks that the State and ratepayers will benefit from the diversity of solutions that the RENs bring to the energy efficiency portfolio. We hope that the Commission will continue to support the RENs into the future.

Dated: April 16, 2019

Respectfully submitted,

/s/ Dan Suyeyasu

Dan Suyeyasu
Director
CodeCycle LLC
5290 College Ave, Unit C
Oakland, CA 94618
Tel: (510) 410-2457
E-mail: dan.suyeyasu@codecycle.com