

PUBLIC UTILITIES COMMISSION

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April 7, 2020

VIA E-MAIL

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**SUBJECT: Follow up Assurances to Energy Savings Assistance (ESA) Contractors During the COVID 19 Pandemic**

I write to you in response to Governor Gavin Newsom's proclamation of a state of emergency in California due to the spread of COVID-19, and as a follow up to your offers of 30-day advance payment made to Energy Savings Assistance (ESA) contractors on March 24, 2020, prompted by my March 23, 2020 letter. I understand the majority of contractors accepted your offers and you received alternative proposals from many of the remaining contractors. Based on California Public Utilities Commission (CPUC) Staff's review of the alternative proposals, I request the IOUs offer an additional 30-day advance payment in no more than 5 business days and carry out the additional actions listed in this letter. The actions described in this letter, and in my March 23, 2020 letter, and the elements in

proposed alternatives not addressed in these letters, will be submitted to the CPUC for a vote no sooner than May 28, 2020.

On March 4, 2020, Governor Newsom declared a State of Emergency in California related to COVID-19. On March 12, 2020, Governor Newsom issued a new Executive Order recognizing that individuals exposed to COVID-19 may be unable to report to work due to illness or quarantines, and ordering numerous measures including social distancing<sup>1</sup>. On March 19, 2020, Governor Newsom ordered all residents to heed State public health directives, including the order for all individuals living in the state to stay home or at their place of residence except as needed to maintain continuity of operations at the federal critical infrastructure sectors ("Stay at Home" order)<sup>2</sup>.

As of March 23, 2020, Pacific Gas and Electric Company, Southern California Edison, Southern California Gas Company, and San Diego Gas & Electric Company had suspended activities requiring face-to-face customer visits to implement their Energy Savings Assistance (ESA) programs. On March 23, 2020, I released a letter requesting all four large Investor Owned Utilities (IOUs)<sup>3</sup> to provide specific assurance to help ensure the economic stability of the ESA program's workforce. I sent this letter for a number of reasons including: the ESA program workforce's dependence on the ESA program funding, a large fraction of the workforce is comprised of small businesses and community based organizations training local workforces with job skills, and the importance of local workforces to meet the 2020 ESA household treatment goals. Since this initial letter, a number of events have occurred necessitating this second letter to provide follow up assurances.

## Recent Events

On March 24, 2020, all four IOUs offered their Prime contractors advance payments. On March 26, 2020, all four IOUs reported responses from Prime Contractors to the 30-day advance payment offer made to ESA contractors during the COVID-19 pandemic. In their response letters, the IOUs stated that they have no overdue payments, and, further that they would make expedited payment on remaining invoices in-hand to support increased cash flow to all Primes.

Of the 78 contractors, not all unique and some serving multiple territories, 100 percent reported back to IOUs, 51 percent accepted the offer, 34 percent declined, and 15 percent, or 10 contractors, are holding for a CPUC response to alternatives. The CPUC received 28 alternative proposals from 16 contractors through the IOUs. In the IOU response letters, the IOUs provided their own disposition recommendation to the contractor proposed alternatives.

On April 1, 2020, the IOUs began sending follow up notifications of extended suspension of in-person program activity through April 30, 2020 to ESA contractors. We understand the IOUs are

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<sup>1</sup> Executive Order N-25-20.

<sup>2</sup> Executive Order N-33-20.

taking these actions in an effort to follow the guidance of local, state and federal government health and emergency response agencies.

At the same time, initial federal and state government assistance packages have been announced for small businesses. The federal Coronavirus Aid, Relief and Economic Security (CARES) Act was signed into law on March 28, 2020, making loans available on a first come-first served basis for small employers, available starting as soon as April 3, 2020. On April 2, 2020 Governor Newsom announced loan guarantees to small businesses to help eliminate barriers to capital for individuals who do not qualify for federal funds, including low wealth and undocumented immigrant communities.

Still, hearing that guidance from the Small Business Administration (SBA) and the U.S. Treasury to financial institutions offering loans and processing of applications will take some time, and understanding there are eligibility limitations for California loan offers, we anticipate an additional 30-day advance payment offer is needed to sustain skilled workers in their positions as ESA contractors until ESA businesses are reasonably able to avail themselves of these other assistance packages.

In CPUC Staff's review of the alternative proposals received in response to the offer of 30-day advance payment made March 24, 2020, there are a number of elements that I request the IOUs take action on, listed in the "Requested IOU actions" section below. The actions described in this letter, and in my March 23, 2020 letter, and the elements in proposed alternatives not addressed in these letters, will be submitted to the CPUC for a vote no sooner than May 28, 2020. The IOUs should leave offers open until the date of the vote.

### Elements of Proposals Received

The 28 alternative proposals received through the March 26, 2020 IOU submission and two subsequent submissions received on March 27 and March 31, 2020 included the following elements:

- Forgivable loan: Allow the repayment of the advancement of funds be waived if they maintain their current workforce levels for at least four months after restrictions on face-to-face interactions are lifted
- Create a "resiliency costs" measure to facilitate the Primes' repayment of advances received
- Offer advance payment for a period longer than 30 days
- Extend period for paying back advanced funds to 1-2 years and thus extend associated contracts
- Change in formula for calculation of 30-day advance payment amount
- Change in tracking/reporting requirements
- Request for advance to cover non-labor support (overhead, freight costs, and appliance supply contract costs)
- Expedite payment on invoices without additional processing fees

- Create different, and phased, payment pathways for ESA Common Area Measures (CAM)
- Place liability with the Utility if the Prime is unable to repay (e.g. due to a subcontractor to a Prime defaulting or going out of business)
- Change the ESA policy and procedures manual to allow additional alternatives to face-to-face enrollment mechanisms

## Requested IOU Actions

Below are the following requested actions for the IOUs to undertake:

- **Offer additional 30-day advance:** In no more than 5 business days from the date of this letter, IOUs should offer an additional 30-day advance payment. The advance should be offered to eligible contractors, i.e. those entities that have been directed by the IOUs to suspend work in response to COVID-19 and hold existing contracts with the IOUs to implement ESA programs and ESA CAM, in 2020.
- **Expedite invoice payments:** IOUs should maintain their efforts to accelerate payment on invoices received from Primes, and target making payment on invoices within 10 days of receipt of invoice. Additionally, IOUs should waive any associated fee to Primes for the accelerated processing of their invoices.
- **Allow consideration of overhead costs:** The advance payment should cover the labor costs plus costs critical to sustaining the workforce (e.g., employer's contribution to health care premium, etc.). The advance payment may also cover overhead costs if in the IOU's judgement such costs are reasonably necessary to avoid significant delay ramping up operations after suspensions are lifted (e.g., lease payments, liability insurance). The advance payments should not be used to pay for company profits, any materials, or other ancillary costs not related to sustaining the workforce.
- **Update calculation for advance:** The payment should be calculated by the IOU as the average monthly pay to the Prime Contractor for ESA program work (if the average over the 2019 program year is not representative and lower than anticipated invoicing in 2020 had no face-to-face restrictions occurred, the IOU should discuss a variant offer amount with the Prime reflective of the Prime's planned 2020 workforce ).

### Other notes for emphasis and clarification

The following three areas are noted to emphasize and clarify guidance in my March 23, 2020 letter:

- 1) The Prime Contractor can choose to accept a smaller advance payment sum as:
  - the calculation of advance payment is an overestimate of the costs required by the Prime (the calculation was made prior to removal of any costs associated with ownership, payments to senior executives, profit and materials)

- the Prime may have certainty of other assistance funds that can serve as replacement cash source for sustaining workforce and contractors in their alternative proposals have affirmed they will not “double dip”
  - the Prime is aware that accepting additional advance funds will be more difficult to pay back without an extension to the payback period and/or an assured increase in volume of households to be treated
- 2) The Prime Contractor should zero-out the net funds advanced balance by a date negotiated with the IOU but no sooner than December 31, 2020. If necessary, a contract extension should be negotiated with the Prime Contractors giving a minimum of six months after the lifting of orders limiting face-to-face work. Therefore, the “Payback Period” is the period commencing on the date that the IOU notifies the Prime the suspension has ended until the later of (a) December 31, 2020, or (b) the end of the sixth calendar month after the suspension end date.
- 3) Any repayment term included in an IOU offer should be expressly stated as a placeholder term only, and accompanied by clear guidance to the Prime that they have 30 calendar days after the date restrictions are lifted to set a schedule and increments for repayment, per guidance in my March 23, 2020 letter:

*The Prime Contractor has discretion to set the schedule and increments by which they will reach a zero funds advance balance by the negotiated date, but the planned schedule should be reported to the IOU 30 days after the date the restrictions are lifted.*

All other guidance and intents of my March 23, 2020 letter not amended, modified, or further clarified in the above, stands.

As soon as practicable, but no later than 5 business days from the date of this letter, the four large IOUs are requested to offer and discuss with eligible contractors a second advance payment of 30 days, as described above. If acceptable to the Prime Contractors, IOUs and Prime Contractor are requested to take action to implement with no further guidance needed from CPUC.

For offers made in response to the March 23, 2020 letter but not accepted by Primes, a new 60-day advance payment, following the guidance in this letter should be offered to these Primes in replacement of the initial 30-day offer.

For Primes that accepted the first 30-day advance payment offer, IOUs should offer this second 30-day advance payment following the guidance in this letter. Additionally, the IOU is to invite the Prime to request amendment to either or both the first 30-day advance payment accepted or second 30-day payment offered such that Primes that already accepted the first 30-day advance payment are not at an unfair disadvantage compared to those that had not accepted and have been offered a 60-day advance payment following the guidance in this letter.

April 6, 2020

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## Requests and Authorizations of Energy Division

Energy Division Staff should amend the Energy Savings Assistance Policy and Procedure Manual (ESA P&P Manual) to reflect the request in the March 23, 2020 letter that IOUs maximize efforts to shift from face-to-face marketing outreach and education activities to alternative mechanisms while ESA program activity is suspended due to public health and safety concerns and mandates in response to COVID-19.

Further, Energy Division may make program modifications to the ESA P&P Manual in emergency situations, natural disasters, and other such unforeseen circumstances (e.g. recent wildfires, PSPS, COVID-19 public health crisis, etc.) especially to maintain alignment of the ESA P&P Manual with Government Executive Orders and/or CPUC Executive Director Letters and mandates.

The Director of the CPUC's Energy Division may recommend adjustments to the above guidance as necessary with such modifications being included in the resolution placed before the full Commission regarding this letter.

Sincerely,



Alice Stebbins  
Executive Director

CC: President Marybel Batjer, CPUC  
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CPUC Commissioner Liane Randolph  
CPUC Commissioner Clifford Rechtschaffen  
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CPUC Service List to A.19-11-003 and A.15-02-001