

Date of Hearing: June 27, 2018

ASSEMBLY COMMITTEE ON UTILITIES AND ENERGY

Chris Holden, Chair

SB 1131 (Hertzberg) – As Amended June 13, 2018

SENATE VOTE: 36-0

SUBJECT: Electrical and gas corporations: energy efficiency: financing options: industrial and agricultural processes: custom projects

SUMMARY: Requires the California Public Utilities Commission (CPUC) to authorize investor-owned utilities (IOUs) incentives for industrial and agricultural energy efficiency projects based on reductions measured by normalized metered energy consumption (NMEC) and establishes new requirements and timelines for the CPUC's review of custom projects. Specifically, **this bill:**

- 1) Mandates the adoption of criteria and metrics related to custom energy efficiency projects for industrial, agricultural, commercial residential and public sector customers, requires that all customer projects be able to utilize NMEC to measure savings, and that the savings from these programs count toward the overall energy efficiency goals or targets required of IOUs or other program administrators.
- 2) Requires the CPUC to develop and maintain eligibility criteria or metrics and circulate new or modified rules for public review and comment within specified timelines.
- 3) Requires IOUs to maintain an archive of previously approved custom projects and other programs.
- 4) Prohibits the CPUC from applying new criteria or metrics to projects pending or previously approved.
- 5) Mandates rate recovery for IOUs for the reasonable costs of energy efficiency programs.
- 6) Requires the CPUC, within 30 days of notice of a project from an IOU, to make a determination of whether a custom project will be reviewed by the CPUC and requires the CPUC to complete which review within 30 days of submission of the project according to rules, metrics and criteria in effect at the time the project application was submitted. If a project is rejected by the CPUC, requires detailed notices of deficiencies in the project application. If a project is not selected for review within 30 days, the project is deemed approved.
- 7) Requires the CPUC to adopt rules for a dispute resolution process for an IOU or customer to challenge the rejection of a project application.
- 8) Allows IOUs to rely on forecasted energy savings when entering into customer incentive agreements for approved projects, projects not selected for custom review, or that were not reviewed within the prescribed timelines.

- 9) Permits the CPUC to later review projects and to obtain information on the project to determine whether eligibility criteria
- 10) Ensures that CPUC is not limited from evaluating projects or programs for the purpose of prospectively adjusting projects or programs for industrial and agricultural processes,
- 11) Expresses the intent of the Legislature that the CPUC implement this section by establishing applicable rules, within a reasonable period of time and in an open process, that are clear and operate on a prospective basis.

EXISTING LAW:

- 1) Requires the California Energy Commission (CEC) to establish a comprehensive program to achieve greater energy savings in California's existing building stock. (Public Resources Code § 25943)
- 2) Creates a charge on electricity and natural gas consumption to fund cost-effective energy efficiency and conservation activities. (Public Utilities Code § 381 and § 890)
- 3) Requires the CPUC to identify all potentially achievable, cost-effective electricity and natural gas efficiency savings and establish energy efficiency targets and ratepayer-funded programs for IOUs. Requires a gas corporation to first meet its unmet resource needs through all available natural gas efficiency and demand reduction resources that are cost effective, reliable, and feasible. (Public Utilities Code §§ 454.55 and 454.56)
- 4) Requires the CPUC to authorize an IOU to provide incentives for the cost of energy efficiency programs based on all estimated energy savings, including energy savings from bringing existing buildings into compliance with mandatory energy efficiency codes for existing buildings issued by the CEC, and authorizes an IOU to recover the costs in rates. Directs the CPUC to allow an IOU to take into consideration the overall reduction in NMEC as a measure of energy savings of the IOU's energy efficiency program. States that the CPUC may adjust the energy efficiency procurement targets to reflect energy efficiency savings achieved in meeting or exceeding mandatory energy efficiency codes for existing buildings. (Public Utilities Code § 381.2)

FISCAL EFFECT: According to the Senate Appropriations Committee, the CPUC indicates that it would incur ongoing annual costs of \$712,000 (ratepayer funds) to implement the provisions of this bill. The CPUC would require four new permanent positions to adjust energy efficiency goals and targets for utilities to reflect new information that was not considered when the original goals and targets were considered, create program application process and project eligibility criteria, staff a rulemaking for new procedures and evaluation criteria, and conduct workshops and webinars.

BACKGROUND:

Custom Project Review Process – Custom measures and projects are energy efficiency efforts where the customer's financial incentive and the ex ante energy savings are determined using a site-specific analysis of the customer's existing and proposed equipment, and an agreement is made with the customer to pay the financial incentive upon the completion and verification of

the installation. The efforts are by definition unique, each with their own characteristics. Parameters that determine estimated energy savings from a custom measure or project are more variable and less predictable without a site-specific analysis than the more common “deemed measures” for which savings parameters can be predetermined. Because of the uniqueness and size of each project the CPUC has established a process to review the project – custom review.

The IOU reviews the project to ensure the project meets certain criteria and submits the project to the CPUC for review. To ensure that the utilities are appropriately reviewing projects, the CPUC selects a small number of projects for additional review. Projects that would require a large amount of incentives or provide large amounts of savings are prioritized. After the CPUC completes its review of these selected projects, these projects are either approved or denied. Approved projects receive incentive funds based on the estimated energy savings. Currently, no consistent deadlines exist for obtaining responses on reviews of proposed projects. Industry stakeholders have claimed that the review process is often delayed and methodologies for calculating savings are unclear.

Normalized Metered Energy Consumption – This bill requires the CPUC to authorize IOUs to provide financial incentives, rebates, technical assistance, and support a wide range of energy efficiency measures implemented by any type of customer based on reductions in NMEC. NMEC is a methodology used to calculate energy savings achieved through the implementation of an energy efficiency measure or project. NMEC is intended to provide a clear mechanism to identify the savings achieved by measuring the real savings achieved based on the customer’s reduction in energy use measured at the meter. The data can be “normalized” to help identify the extent to which a project or measure led to savings that would not otherwise have occurred.

While NMEC provides significant benefits, including emphasizing achieving savings significant enough to be measured via metered energy, the CPUC has limited use of NMEC opining that it may not be appropriate for all energy efficiency projects. Since industrial and agricultural are highly customized and savings are difficult to normalize, using NMEC for efficiency projects in these buildings may be challenging according to the CPUC.

AB 802 (Williams, Chapter 590, Statutes of 2015) established a mechanism for evaluating the energy savings achieved by energy efficiency projects, including projects for commercial buildings. This evaluation uses NMEC and establishes a baseline that can be used to measure energy savings against the baseline. Currently, this methodology is not applied to agricultural and industrial buildings due to their customized nature. This bill requires the CPUC to calculate energy efficiency savings from industrial and agricultural projects using the NMEC methodology created by AB 802.

COMMENTS:

- 1) Author’s Statement. According to the author, with varying industrial businesses and agricultural productions in California, it is not as explicit in the outset of a project under AB 802, what it means to have achieved energy efficiency. The lack of transparency from CPUC through this project analysis discourages applicants and leaves significant energy savings stranded. Achieving our state’s pioneering energy goals necessitates that we include all users. This includes the industrial facilities and agricultural equipment where we can capture the most energy savings and lead to reduced greenhouse gas

emissions.

- 2) The Log Jam. The program at issue in this bill is commonly referred to as “Custom Review” and is required for proposed energy efficiency projects for very large electricity and gas customers in the commercial, agricultural, and industrial sectors, where the processes they use in daily business are unique and consume large quantities of energy. Consequently, establishing across the board standards for these projects is a challenge and it results in the CPUC’s review of individual projects across the state. That’s where the hang-up occurs.

The fundamental issue addressed by the author is this unpredictable process of review, The CPUC requires these projects to go into “custom review” but few seem to come out on a timely basis. Projects go on the list but rarely come back. Indeed the larger the savings, the larger the customer, the more unique the efficiency measures, and the larger the cost. Efficiency doesn’t come off the shelf for these projects. It requires engineering and sophisticated and specialized contractors to plan and evaluate the applicable efficiency measures and expected energy savings.

The custom review process too often results in missed opportunities to reduce substantial energy use in the commercial, industrial, and agricultural sectors as projects are delayed or abandoned because (the customer tires of the bureaucracy). Typically other planned improvements to the business site which must be done (and therefore there was an opportunity to incorporate efficiency measures) must go forward without the efficiencies.

- 3) Micro-Managing Energy Efficiency. There are many different types of energy efficiency efforts. The programs most of us routinely encounter (whether we know it or not) are Title 20 appliance efficiency standards which dictate technical requirements of manufacturers of products sold in this state. The second is Title 24 energy efficiency building standards.

The problem with custom review projects has existed for many years. Since 2015 rulings and decisions in the CPUC’s Rolling Portfolio proceeding which governs energy efficiency acknowledge that there are several mechanics of the custom projects that require change. Administrative proceedings have received comments, working groups have been convened, and resolutions have been issued. Yet there still has been little done to address the issues.

On the review of custom projects, the most recent comments made in a scoping ruling to the Rolling Portfolio indicate that they will “allow stakeholder input on the custom review process, and the development of a streamlined approach.” The only action that has occurred is that CPUC staff has developed “a protocol for timely exchange of documentation” and other aspects of streamlining will be discussed in 2018.

This bill establishes in statute a very proscriptive process of review by the CPUC for any proposed custom energy efficiency project for customers of the IOUs. Generally committee staff would suggest to members that this level of detail in statute inappropriately ties the hands of an agency. However, in this instance, supporters have made several attempts to work with the CPUC over several years to make the program

work. Nevertheless, proposed efficiency projects are submitted by IOUs to the CPUC for review and sit...sometimes for months.

We first question how an efficiency program can run efficiently when one agency tries to review individual projects in a state the size of California. Setting that issue aside, if it's going to occur, the agency must respond in a reasonable time frame or let the project go forward. This is the primary purpose of this bill.

- 4) Normalized Metered Energy Consumption. Savings for custom review projects have historically been estimated at the front end of a project and utilized extensive engineering for each project. In 2015 the Legislature called for a new measurement of savings – normalized metered energy consumption – where actual savings would be measured based on the actual use of energy by the consumer after the efficiency measures have been instituted. A strict comparison of the meter before and after cannot generally be used. The metered savings must be adjusted (aka normalized) for changes in weather and production, for instance.

The 2015 legislation directed the CPUC to incorporate NMEC in energy efficiency programs and directed the IOUs to immediately file plans for “high opportunity projects and programs” utilizing NMEC. The filings occurred but the use of NMEC has been limited. CPUC actions have also limited use to energy in the building sector and so NMEC has not been made available to agricultural and industrial processes.

This bill mandates that NMEC be used to “provide financial incentives, rebates, technical assistance, and support to their customers to increase the energy efficiency of industrial, agricultural, commercial, residential, and public sector customers based on energy savings measured at the meter. The bill states that the CPUC shall authorize; the bill doesn't mandate that this tool be applied to each and every energy efficiency program for every customer in those programs.

- 5) Legislative Ratemaking. The Public Utilities Code provides the CPUC with full and complete authority to provide cost recovery to the regulated utilities, or not, if it finds costs to be just and reasonable. This bill adds language that mandates cost recovery in rates if the CPUC finds the costs reasonable. This provision is not necessary, could be construed as somehow changing the CPUC's current ratemaking authority, and could fall in to the category of legislative ratemaking which has been historically avoided. *The committee may wish to consider striking this section.*

- 6) Related Legislation.

SB 370 (Hertzberg) would have required the CPUC to authorize IOU incentives for industrial and agricultural energy efficiency projects based on NMEC. The bill would also have established requirements and timelines for the CPUC review of project eligibility for incentives. Status: Held in Senate Appropriations Committee.

- 7) Prior Legislation.

AB 802 (Williams) required the CPUC to authorize IOU incentives and assistance for building energy efficiency measures that support the CEC's energy efficiency standards

for existing buildings and to allow IOUs to recover reasonable costs of those incentives and assistance through rates. (Chapter 590, Statutes of 2015)

SB 350 (De León) the Clean Energy and Pollution Reduction Act of 2015, established new clean energy, clean air and GHG reduction goals. Specifically, the bill established a goal to double energy efficiency in existing buildings by 2030 and directs the CPUC to authorize energy efficiency program to meet the goal. (Chapter 547, Statutes of 2015)

AB 758 (Skinner) required the CEC to work with the CPUC and stakeholders to develop a comprehensive program to achieve greater energy efficiency in existing buildings. (Chapter 470, Statutes 2009)

REGISTERED SUPPORT / OPPOSITION:**Support**

California Efficiency + Demand Management Council (Sponsor)
Advanced Energy Economy
California Business Properties Association
California Farm Bureau Federation
California Food Producers
California Large Energy Consumers Association
California Manufacturers & Technology Association
California State Association Of Electrical Workers
California State Pipe Trades Council
Coalition Of California Utility Employees
International Union Of Elevator Constructors
NAIOP Of California
National Federation Of Independent Business (NFIB)
Natural Resources Defense Council
Western States Council Of Sheet Metal Workers

Opposition

None on file.

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