



State of California

M e m o r a n d u m

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CC: Peter Lai, CPUC

From: Peter Biermayer P.E., Utilities Engineer, EE Planning & Forecasting Section, Energy Division, CPUC

Subject: CPUC STAFF PROPOSED PREPONDERANCE OF EVIDENCE REQUIREMENTS FOR ACCELERATED REPLACEMENT OF DEEMED MEASURES FOR PY2023 AND BEYOND

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## BACKGROUND

Resolution E-5115 issued on February 11, 2021 adopts “minimum evidence requirements guidance to support custom projects accelerated replacement measure type.” It was intended to address “issues related to evidence requirements for the determination of energy consumption baselines for energy efficiency programs pursuant to D.16-08-019 and Resolution E-4818.”

*This resolution adopts guidance for the documentation required when implementing the preponderance of evidence process adopted in Resolutions E-4818 and E-4939 for custom “accelerated-replacement” energy efficiency (EE) projects.<sup>1</sup> Accelerated-replacement refers to projects for which an energy efficiency incentive and/or program technical services induced a customer to replace an inefficient equipment or process with one that is more energy efficient while the existing equipment or process is still functioning.<sup>2,3</sup>*

To comply with previous directives, Resolution E-5115 “provides:

- Documentation required to demonstrate that existing energy inefficient equipment would continue to operate at an expected level of service for its remaining useful life,<sup>4</sup>

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<sup>1</sup> Custom Energy Efficiency Projects are those projects whose efficiency savings are derived from site-specific calculations, rather than pre-determined measure-level values. Custom Programs include projects in Commercial, Residential, Industrial & Agricultural Sectors.

<sup>2</sup> Accelerated-replacement includes the subcategory of “repair-eligible” equipment, since the preponderance of evidence determination process adopted in Resolution E-4939 applies to all accelerated-replacement measure types, including those associated with “repair-eligible” equipment, eliminating the need for separate considerations or processes for repair-eligible projects.

<sup>3</sup> Resolution E-5115, Section 1. Summary, p. 2.

<sup>4</sup> Note that the required documentation varies by incentive level.

- Guidance on the minimum documentation required to demonstrate program influence,<sup>5</sup> and
- A description of the process for future updates to CPUC Staff's Preponderance of Evidence Guidance Document.<sup>6</sup>

Resolution E-5115 Ordering Paragraph 10 further directs “CPUC staff shall update the existing Preponderance of Evidence Guidance Document to include the appropriate incentive tier levels and informational requirements for preponderance of evidence of deemed measures equipment viability and program influence to support an accelerated replacement baseline consideration.”

### **PREVIOUS CUSTOMER QUESTIONNAIRE**

Prior to 2023-01-01, deemed measure packages involving measures that were categorized as accelerated replacement (AR) required a questionnaire to be completed by each customer at the time of submission of the incentive application. A sample questionnaire follows:

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<sup>5</sup> Program influence is defined as the replacement of an energy inefficient equipment or process with a more energy efficient one is being done so more likely than not because of program offerings through a program administrator's energy efficiency program.

<sup>6</sup> CPUC staff's “Project basis as Early Retirement (ER)/Replace-on-burnout (ROB)/Normal Replacement (NR)/New Construction (NC)/Add-on Retrofit (Ret) and remaining/Effective useful Life (RUL/EUL), and Preponderance of evidence” guidance document. (Previously located at: <https://www.cpuc.ca.gov/General.aspx?id=4133>; document could not be found.)

**Table 1. Questionnaire for accelerated replacement of deemed measures**

<b>1. What was the condition of the existing equipment?</b>				
Functional	Functional requiring some repairs (<20% of units)	Condition Unknown	Functional with Issues (>20% of units needing repair)	Not Functional and needed replacement
<b>2. The primary reason I replaced my existing equipment with energy efficient equipment was to save energy and reduce my electric bill.</b>				
Agree Strongly	Agree Somewhat	Neither Agree nor Disagree	Disagree Somewhat	Disagree Strongly
<b>3. If not for the rebate and energy savings information, I would have continued to use my existing equipment.</b>				
Agree Strongly	Agree Somewhat	Neither Agree nor Disagree	Disagree Somewhat	Disagree Strongly
<b>4. Before learning about the rebate, I had no firm plans to replace my existing equipment with efficient ones. I would have continued to make repairs to my existing equipment.</b>				
Agree Strongly	Agree Somewhat	Neither Agree nor Disagree	Disagree Somewhat	Disagree Strongly
<b>5. Without the rebate and energy savings information, I likely would have...</b>				
Have continued to maintain existing equipment	Installed equipment in more than one year	Not sure what I would have done	Installed equipment in less than one year	Installed equipment at the same time

Although the preceding questions and answers were sometimes tailored for specific measures, this reflects the gist of the questionnaires administered.

**DEEMED MEASURE GUIDANCE**

As of 2023-01-01, the preceding questionnaire is no longer required to be completed. In its place, a Customer Affidavit Statement and some additional documentation must be gathered for all accelerated-replacement deemed measures as described in the sub-sections that follow. Furthermore, upstream delivery of AR deemed measures will no longer be permitted—including point-of-sale midstream offerings—since the viability of the existing equipment cannot reasonably be expected to meet the “preponderance of evidence” threshold.

**CUSTOMER AFFIDAVIT STATEMENT**

As of 2023-01-01, the Customer Affidavit Statement must be completed by every customer implementing the accelerated replacement of a deemed measure, regardless of the customer incentive level.

## Exhibit 1. Customer Affidavit Statement Required for All Incentive Levels<sup>7</sup>

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I, (name), hereby certify that I am authorized to make this declaration as the Customer or as an authorized representative of the Customer (name). By signing below, I certify that the existing equipment being replaced is in operating condition to the best of my knowledge. I acknowledge that misrepresentation will result in a rejection of all or part of the project and that the Customer may be required to return the incentives associated with this project. I further acknowledge that misrepresentation will result in future projects submitted by the Customer being subjected to additional scrutiny and may result in Customer probation or suspension from current and future incentive programs.

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### **DOCUMENTATION OF INFLUENCE**

Again, the Customer Affidavit Statement must be completed by every customer, regardless of the customer incentive level. Beyond that, additional evidence requirements for deemed applications are described in Table 2.

Resolution E-5115 indicated that project developers “must not disaggregate custom project measures into multiple ‘customer applications’ that are actually a single activity carried out in phases, or separate the project into multiple applications that act to avoid the customer incentive level thresholds.”<sup>8</sup> As of 2023-01-01, this rule also applies to deemed measure applications.

The rigor of the documentation to be gathered depends upon the total of all incentives and rebates provided to:

- The customer
- The implementer or contractor hired by the program (sometimes tracked as a program cost)
- The third-party contractor hired by the customer

When the incentive provided to the implementer or program contractor is not reported (e.g., direct-install programs with pay-for-performance contracts), it may be estimated using an agreed-upon dollar amount per kWh of savings as is presently done for some custom applications.

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<sup>7</sup> Resolution E-5115, Section 4.2. Preponderance of Evidence Requirements for Equipment Viability for the Very Low, Low and Medium Rigor Customer Incentive Level Tiers, p. 16.

<sup>8</sup> Resolution E-5115, Section 4.1. Customer incentive threshold tiers, p. 13.

**Table 2. Evidence of Equipment Viability Requirements for Deemed Measures in Addition to Customer Affidavit Statement\*\* Requirement**

<b>Rigor</b>	<b>Additional Requirements</b>
<b>Minimal</b> <sup>†</sup> (Customer Application Incentive: ≤ \$2,500)	<b>Physical Evidence of Equipment Viability:</b> None
	<b>Program Influence Information:</b> 1. Execute questionnaire in Table 3.
<b>Very Low</b> (Customer Application Incentive: > \$2,500 and ≤ \$7,500)	<b>Physical Evidence of Equipment Viability:</b> None
	<b>Program Influence Information:</b> 1. Describe this application’s development, including factors and decision points that led to the customer’s decision to replace the existing equipment. 2. Describe the application developer’s services provided to the customer and timing of developer’s engagement compared to customer’s decision-making process.
<b>Low</b> (Customer Application Incentive: > \$7,500 and < \$25,000)	<b>Physical Evidence of Equipment Viability:</b> Photos or videos
	<b>Program Influence Information:</b> 1. (Same as for “Very Low” rigor) 2. (Same as for “Very Low” rigor) 3. Describe the customer’s maintenance and/or upgrade practices associated with the equipment, if applicable.
<b>Medium</b> (Customer Application Incentive: ≥ \$25,000 and < \$100,000)	<b>Physical Evidence of Equipment Viability:</b> Photos or videos, plus application developer to collect additional information: 1. Age of existing equipment (for example, installation date or initial operation date) 2. Operating history or EMS data of existing equipment
	<b>Program Influence Information:</b> 1. Describe the application’s development, including the customer’s motivating factors and all factors that the customer considered as it planned, designed, and selected the efficient equipment to replace the existing equipment. 2. Describe the project developer’s services provided to the customer and timing of developer’s engagement compared to customer’s decision-making process. 3. Describe the decision-making process for determining and selecting a specific energy efficiency measure option(s)? What are the customer’s criteria in decision-making? 4. Describe the customer’s scheduled maintenance or equipment upgrade practices, if applicable. 5. What are the customer’s barriers (if any) to adopting the proposed new energy efficiency measure? What are its resource constraints (if any)? 6. What are the regulations (e.g., code, standards) applicable, if any, to the existing equipment and the relevant energy efficiency measure?
	<b>Physical Evidence of Equipment Viability:</b>

Rigor	Additional Requirements
<p><b>Full</b> (Customer Application Incentive: <math>\geq</math> \$100,000)</p>	<p>Photos or videos, plus application developer* to collect additional information:</p> <ol style="list-style-type: none"> <li>1. Age of existing equipment (for example, installation date or initial operation date)</li> <li>2. Operating history or EMS data of existing equipment</li> </ol> <p><b>Program Influence and Equipment Viability Information:</b></p> <ol style="list-style-type: none"> <li>1. Describe this application’s development (for example, in a timeline format will be helpful).</li> <li>2. Describe the customer’s main motivating factors for the application development; include all factors that the customer considered as it planned, designed, and selected the application to replace the existing equipment. This should include the eligible and viable energy efficient measure options considered by the customer and the customer’s normal practice in operation and maintenance and availability of records and the range of relevant regulations and resources considered by the customer.</li> <li>3. Describe a set of problems the customer is trying to resolve, e.g., what are the business needs and wants of production, maintenance, reliability, capacity, competitiveness, productivity, and regulations, etc. for the proposed application?</li> <li>4. Describe the decision-making process for determining and selecting a specific energy-efficiency measure option(s)? What are the customer’s criteria in decision-making? What are the customer’s barriers (if any) to adopting a new energy efficiency measure? What are its resource constraints (if any)? Clarify the timing of the customer’s decision points and compare them to when the application developer was engaged and interacted with the customer to validate influence on the proposed application.</li> <li>5. Describe the project developer’s services provided to the customer and timing of the project developer’s engagement compared to customer’s decision-making process. When and how did the program implementers get involved in the specific application (e.g., in which stage of the application development), and what information and technical resources did the program implementers bring to the customer during customer’s decision-making process for the specific energy efficiency measure option? Describe the customer’s decision-making process and points.</li> <li>6. Describe the age of the equipment along with its estimated remaining useful life and any major repairs performed on the existing equipment, not related to a full system overhaul, in the last 24 months.</li> <li>7. Describe any maintenance issues for the existing equipment in the last 36 months.</li> <li>8. Describe any regulations or standard practices and how they are applicable to the existing equipment and the relevant energy efficiency measure?</li> <li>9. Has the customer updated any of its existing systems? If yes, when and what was it? Explain the reasons for switching to the new measure/system.</li> <li>10. Describe the range of alternative solutions that the customer considered, if any? Describe the range of vendors, equipment efficiency, capacity, and costs.</li> </ol>

† Tier added for deemed measure applications, only

\* Application developers include program administrators and third-party program implementers

\*\* Documentation of this supporting information should happen as a project/application is being developed; it should not be created or re-created after the fact.

“We recognize that some customers will refuse to submit photos or videos due to security concerns. However, waiving provisions of required evidence based on customer security concerns should only be allowed when such evidence of currently installed and operating equipment divulges proprietary information or trade secrets or pertinent to national security. For example, pictures of HVAC equipment or standard off-the-shelf equipment should not be a waived requirement. A site having security constraints cannot have an automatic ability to deny the collection of evidence. The customer has the responsibility to provide evidence as needed to confirm eligibility and support their claims even if others are not able to access the site.”<sup>9</sup> As of 2023-01-01, this limiting of waiving provisions of requirement evidence also applies to deemed measures.

The existing questionnaire provided in Table 1 has been modified as presented in Table 3 and is required for the “minimal” rigor tier for accelerated replacement of deemed measure applications as of 2023-01-01.

**Table 3. Modified questionnaire for accelerated replacement of deemed measures**

<b>1. If not for the rebate and energy savings information, I would have continued to use my existing equipment.</b>				
Agree Strongly	Agree Somewhat	Neither Agree nor Disagree	Disagree Somewhat	Disagree Strongly
Score associated with each response*				
2	1	0	-1	-2

<b>2. Before learning about the rebate, I had no firm plans to replace my existing equipment with efficient equipment. I would have continued to make repairs to my existing equipment.</b>				
Agree Strongly	Agree Somewhat	Neither Agree nor Disagree	Disagree Somewhat	Disagree Strongly
Score associated with each response*				
2	1	0	-1	-2

<b>3. Without the rebate and energy savings information, I likely would have...</b>				
Continued to maintain existing equipment	Replaced equipment in more than one year	Unsure what would have been done	Replaced equipment in less than one year	Replaced equipment at the same time
Score associated with each response*				
2	1	0	-1	-2

\* Scores may not be implied or made visible to customer representatives completing the questionnaire.

If the sum of the responses to the three questions contained in the questionnaire is greater than zero, then the “preponderance of evidence” threshold is considered to have been met and supports the assertion that the program influenced the timing of the measure’s implementation.

<sup>9</sup> Resolution E-5115, Section 4.2. Preponderance of Evidence Requirements for Equipment Viability for the Very Low, Low and Medium Rigor Customer Incentive Level Tiers, pp. 16-17.

## **COMMENTS**

We present this proposed guidance regarding the applicability to deemed measures of the requirements presented in Resolution E-5115 for custom measures. Please provide any written comments in response to this proposal by Friday, August 5, 2022.