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24-BPS-01, Southern California Edison's comments on Building Energy Performance Strategy Report RFI

Additional submitted attachment is included below.

SOUTHERN CALIFORNIA EDISON®

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June 26, 2024

California Energy Commission
Docket Unit, MS-4
Docket No. 24-BPS-01
715 P Street
Sacramento, CA 95814
docket@energy.ca.gov

Re: Southern California Edison's Response to the California Energy Commission's Request for Information and Input on the California Building Energy Performance Strategy Report, 24-BPS-01

Dear Commissioners:

Southern California Edison (SCE) thanks the Commissioners and the staff of the California Energy Commission's (CEC) Existing Buildings Branch for the opportunity to respond to this RFI regarding the California Building Energy Performance Strategy Report. The Building Energy Savings Act (Senate Bill 48, Chapter 378, Statutes of 2023) is a key opportunity for the state to research and identify data and strategies to support existing building benchmarking efforts and to ideate new laws and regulations to reduce energy consumption and greenhouse gas (GHG) emissions in existing buildings. SCE is strongly supportive of the CEC's efforts to date to address existing building energy consumption and emissions, including through the California Energy Code and Green Building Code as well as through programs that drive heat pump adoption by removing barriers and providing incentives to customers and contractors in the BUILD and TECH programs. We applaud California's determination to examine bold, innovative ways to further reduce energy usage in existing buildings as a critical step to achieving the state's GHG reduction goals.

We have included our responses to the RFI questions below. We hope the information, ideas, and resources can help further the conversation on these important topics. We look forward to engaging with the CEC in its process for developing the California Building Energy Performance Strategy Report.

Regards,

Randall Higa

1. Please provide the following information about you and/or your organization:

1.1. Names & email addresses of public contacts for you and your organization.

Christopher Malotte, Sr. Manager – Codes and Standards, SCE (Christopher.malotte@sce.com)
Randall Higa, Consulting Engineer – Codes and Standards, SCE (Randall.higa@sce.com)
Amy Discher, Sr. Advisor – Codes and Standards, SCE (Amy.discher@sce.com)

1.2. What are your areas of interest in this report development process?

SCE's Codes and Standards program goals is to strengthen, develop, and increase compliance with regulations that promote important state policy objectives (e.g., energy efficiency, decarbonization, water efficiency, electrification, greenhouse gas reduction, alternative fuel vehicles, load flexibility and sustainability, demand reduction, demand response, indoor air quality, and equity considerations). In 2023, the CPUC issued D.23-04-035, which expanded the scope of the Codes and Standards program to support the state's broader clean energy goals, including transportation electrification and building decarbonization. In that decision, the CPUC notes that "Because the CEC's building and appliance standards and other regulations address transportation electrification and building decarbonization, the IOUs' Codes and Standards programs and subprograms must support these broader clean energy goals, in addition to their ongoing support of the clean energy goals being advanced by other state agencies." SCE realizes that Building Performance Standards represent the next major to help achieve the states goals.

1.3. Description of your organization and the constituency you represent.

Southern California Edison (SCE) is an electric utility that delivers electricity to 15 million people across Southern, Central and Coastal California. SCE is focused on accelerating clean power and electrification, strengthening and modernizing the grid, achieving operational and service excellence and proactively mitigating climate-change-related risks, including wildfires.

1.4. What is the best way to outreach and engage with your constituency?

The best way to outreach to the investor-owned utilities (IOUs) is through the public docket, stakeholder engagement meetings, and ad hoc meetings as needed to gather additional information.

2. What building performance metrics (such as site energy use intensity, carbon dioxide equivalent emissions, or peak electric demand) should be considered in a building performance strategy? What building performance metrics could be used to trigger building-level interventions (such as enforcement, incentives, etc.)?

California has multiple energy goals relating to both decarbonization and grid reliability. Decarbonization will require a combination of energy efficiency (efficiency) and electrification measured to be implemented at broad scale. At present, no metrics capture all these dimensions. Metrics like energy use intensity (EUI) can encourage efficiency but doesn't inherently address electrification. GHG-based metrics can encourage electrification but not efficiency, especially when the grid is clean. And neither of these metrics effectively connect to demand flexibility.

The CEC should consider, develop, and recommend a set of consistent metrics that captures the relevant attributes of the energy transition to support better decision-making across scales. Ideally metrics would be available at the meter, would encourage efficiency, electrification, and load management, and would align with time dependent rates. That said, special consideration and flexibility are necessary for early adopters of Building Performance Standards (BPS), to ensure they are not negatively impacted by any decisions at the state level. While Chula Vista is the only jurisdiction with a BPS, eight (8) others have committed to near-term ordinance development as part of their membership in the National BPS Coalition.[1]

SCE doesn't have a specific performance metric recommendation at this time given that many factors need to be considered. Below, SCE outlines suggested metrics for consideration and details the advantages and concerns related to each potential metric. ASHRAE's "*Building Performance Standards: A Technical Resource Guide*"[2] offers a comprehensive guide to BPS metrics.

1. GHG intensity (CO2e/ft2/year, and for operational carbon only) should be considered, while acknowledging that with a cleaner grid, electrification can result in a high-scoring building without efficiency improvement. GHG intensity should account for a building's hourly carbon impact (by

[1] https://nationalbpscoalition.org/participants/

[2] https://forms.ashrae.org/forms/PDFdownload_BuildingPerformanceStandards

multiplying hourly net demand and the marginal carbon on the grid over each hour of the year) as well an any onsite combustion and potentially refrigerant leakage. This encourages use of low-carbon electricity sources. The MIDAS tool would be valuable in providing GHG emissions data associated with the electric grid for this metric (see Question 8 for additional discussion).

2. Energy-based metrics such as site EUI (kBtu/ft^2/year) and Energy Star score deserve investigation due to their familiarity and current integration with the most widely used benchmarking compliance tool, Energy Star Portfolio Manager (ESPM). These metrics are the most widely used in current BPS, and likely will continue to be used in some early adopters' ordinances. SCE has already invested in integration with ESPM through its Benchmarking Dashboard[3], which allows AB802-covered buildings to authorize direct transmission of their usage data to the tool. However, a significant increase in users would require an implementation plan to ensure existing systems are sufficiently prepared.
3. The CEC should consider criteria pollutants in metrics, given the longstanding and stringent statewide regulation, as well as recent actions by the South Coast Air Quality Management District (AQMD)[4] and Bay Area Air Quality Management District (BAAQMD)[5] to limit NOx emissions from residential and commercial natural gas furnaces and/or hot water heaters.
4. Energy cost ($) is used in national model codes such as ASHRAE/IES Standard 90.1, the International Energy Conservation Code, and the International Green Construction Code as well as Title 24 Part 6. This metric is familiar and could offer sufficient connection to emissions to deserve attention where time-of-use (TOU) rates are in effect. Similarly, when used in jurisdictions with TOU rates, this metric could address the critical time dependency of energy usage, given higher energy costs during periods of peak demand.
5. Load flexibility is of very high value to SCE. Two demand flexibility metrics used by the LEED® Green Building Rating System, Grid peak contribution (kW/sq ft) and demand flexibility (energy shed kW/reference demand kW), would also be of potential interest.

SCE is particularly interested in any metrics that would utilize WattTime[6] and take advantage of the Market Informed Demand Automation Server (MIDAS)[7] that includes rates, GHG emissions, and demand response events. Direction and reasonable specification requests from the state to ensure usage of MIDAS in the context of future BPS regulation and supportive programs would leverage its significant potential and the investment to date. See Question 8 for additional discussion.

For additional detail on the specific challenges and potential of load flexibility and grid carbon impact within a current BPS, see section 3.2 *Establish a Time of Use (TOU) Coefficient* within the "Local Law 97 Advisory Board Report."[8]

3. What building specific conditions and circumstances (such as vintage,

[3] https://www.sce.com/business/tools/benchmarking-how-do-i-compare
[4] https://www.aqmd.gov/docs/default-source/news-archive/2024/1146-2-June-7-2024.pdf
[5] https://www.baaqmd.gov/news-and-events/page-resources/2023-news/031523-ba-rules
[6] https://www.energy.ca.gov/publications/2021/market-informed-demand-automation-server-midas-documentation-version-12
[7] https://www.energy.ca.gov/proceedings/market-informed-demand-automation-server-midas
[8] "Local Law 97 Advisory Board Report", https://www.nyc.gov/assets/sustainablebuildings/downloads/pdfs/ll97_ab_report.pdf

climate zone, orientation, etc.) should be included in a building performance strategy?

The CEC should consider the appropriate threshold for exclusion of newly constructed buildings, to allow for sufficient commissioning/break-in time and minimize potential burden to owners to transition from the metrics and requirements of Title 24 Part 6 to the likely new metrics of a BPS. For example, Chula Vista's ordinance exempts buildings that have been occupied for less than five years.

For multifamily buildings not covered by state rent stabilization (based on year of construction, and currently those constructed within 15 years), any BPS adopted should consider protections to cap pass-through costs due to energy retrofits, provide specific requirements for temporary relocation due to construction, and prevent no-fault evictions. This is needed to prevent unintended consequences of increasing household burden for low-income renters and potentially displacement. SCE appreciates the importance of tenant protections, equity language, and stakeholder engagement requirements guiding this process per the SB-48 direction. For detailed recommendations on tenant protections that the state should consider, see the SAJE (Strategic Actions for a Just Economy) report "Decarbonizing California Equitably: A Guide to Tenant Protections in Building Upgrades/Retrofits Throughout the State."[9]

4. How should building benchmarking data be used to prioritize building upgrades and incentives?

The CEC can use benchmarking data to conduct scenario analysis of policy options to evaluate implications of different sets of covered buildings, reduction metrics and targets, and timelines. This can be used to support informed stakeholder engagement, identify the most impactful combinations of strategies, and target subsidies. This can be done at the state level or provided as technical support to local governments. The state can also support further development of tools such as Energy Star Portfolio Manager to ensure it meets the needs of smaller buildings (under 50k sf) that might be covered by local benchmarking and BPS. Eventually, the state should integrate improved metrics into benchmarking systems (see response to Question 2).

Department of Energy (DOE) and the national labs, through the BPS Technical Assistance Network[10] and others, are providing significant support in energy and stock analysis as well as tool development, but more support is needed in scenario planning to see tradeoffs across different metrics and policy considerations.

While AB-802 required benchmarking of buildings greater than 50k sf, several jurisdictions are considering a BPS for buildings 20ksf and above; there is currently a gap in the buildings that are being benchmarked and those covered in local BPS. The state could consider legislation requiring benchmarking and data sharing of increasingly smaller buildings to fill that gap.

If a statewide BPS is not the preferred pathway, local jurisdictions will need significant support to

[9] "Decarbonizing California Equitably: A Guide to Tenant Protections in Building Upgrades/Retrofits Throughout the State", https://www.saje.net/wp-content/uploads/2023/09/Decarbonizing-California-Equitably-Report-1.pdf

[10] https://www.energycodes.gov/technical-assistance/network

analyze their existing building stock and potential covered building vintage/type combinations to achieve desired savings within the chronic limitations of public sector staff capacity for implementation and enforcement. These limitations might lead jurisdictions to target the highest users through a small number of poorest-performing buildings versus requiring performance improvement across most buildings.

5. What types of support and resources would be necessary to help building owners meet building performance targets?

Supportive programs should be tailored to owner needs and could include free or reduced cost on-site and virtual audits, project management support, third-party bid procurement and review, and/or direct-install/turnkey programming (especially for affordable housing). Turnkey retrofits are critical to increasing uptake of energy efficiency retrofits for multifamily buildings,[11] but could also be very effective for a subset of commercial buildings.

Appropriate financing, especially up-front, zero-to-low interest rate loans, will be critical to achieving compliance with any BPS.[12] The state should consider the role of performance contracting in BPS compliance, and if appropriate, remove barriers to its use for smaller buildings. A variety of financing mechanisms are already being considered for current US BPS; many are detailed on DOE's "BPS Financing" website. [13]

Bulk procurement of energy efficient products or job-order contracting (or similar mechanism) should be explored, especially for the most under-resourced communities. Energy efficient purchasing can accelerate market transformation and provide significant savings to jurisdictions.[14] This could be expanded to the covered buildings of a BPS.

Given the quantity of projects needed to achieve widespread BPS implementation, the already strained staff at local building departments (and other agency/agencies responsible for compliance) will face additional workload. The state should explore its role in supporting local government staff and encouraging both expedited permitting and certainty in permitting for retrofits related to BPS compliance.

The CEC should work with the California Public Utilities Commission (CPUC) to ensure that energy efficiency program administrator portfolios are aligned with supporting the goals of and compliance with any future building performance standards. And it is essential that buildings on a pathway to BPS compliance have full access to utility-funded incentives programs. Utility programs provide a useful mechanism of directing customers to more efficient, proven technologies that will provide participant and ratepayer benefits. See Question 12 for additional detail.

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[11] "Multifamily Energy Efficiency Retrofits: Barriers and Opportunities for Deep Energy Savings", https://www.seealliance.org/wp-content/uploads/REEO_MF_Report.pdf

[12] "Messaging Comprehensive Retrofits", https://www.seealliance.org/wp-content/uploads/REEO_MF_Report.pdf

[13] https://www.energycodes.gov/BPS/Financing

[14] "Energy-Efficient Purchasing by State and Local Government: Triggering a Landslide down the Slippery Slope to Market Transformation", https://www.aceee.org/files/proceedings/2004/data/papers/SS04_Panel6_Paper16.pdf

Finally, the state should redouble its workforce, education, and training efforts (including apprenticeship programs) to prepare for the massive need for energy efficiency and electrification projects over the coming decades. Turnkey solutions and bulk procurement can be leveraged to require high road[15] labor agreements and apprenticeship programs to ensure that BPS compliance leads to the creation of high-quality jobs.

6. What enforcement mechanisms should be considered for both benchmarking and a potential building performance requirement? Which similar programs are known to achieve high compliance rates?

Consider model code language that can be adopted by multiple jurisdictions (including across the country) to create consistency and increase the likelihood of compliance. Also consider funding to support regional entities (e.g., IOUs, regional energy networks (RENs), water utilities, community-choice aggregation (CCAs)) that can support streamlined compliance staffing as well as education and outreach on requirements.

Penalties for non-compliance should be clear and high enough to encourage action instead of being seen as an acceptable cost of doing business. Several local BPS have fees based on ton of carbon emissions, which would require a clear carbon-based performance metric that can be verified with carbon programs such MIDAS. Fees for non-compliance should then be used to support implementation subsidies for equity priority customers such as affordable housing, as seen in Boston, Washington, D.C., Denver, and other jurisdictions.

7. What other steps can the CEC take to help building owners comply with existing building benchmarking requirements?

The CEC can undertake a user-centered review to understand low compliance with AB-802, and respond with tools, technical support, and policy changes to minimize burdens.

The CEC can lead efforts to align Title 24 Part 6 and Title 24 Part 11 (CALGreen) with BPS requirements to ensure new buildings aren't out of compliance when covered by a BPS. An early BPS, New York's Local Law 97, has drawn attention for high-profile new buildings that required significant upgrades to meet their BPS targets, despite satisfying the energy code when designed[16]. Pacific Northwest National Lab (PNNL) has been studying conflicts between BPS and energy codes to understand opportunities to harmonize. DOE is expected to release a technical brief later this year which will include recommendations to jurisdictions on potential energy code changes.

The CEC can lead by example by proactively working with other state agencies (particularly Department of General Services) to decarbonize the State's own building stock. State agencies own

[15] https://cwdb.ca.gov/wp-content/uploads/sites/43/2019/09/High-Road-ECJ-Brief_UPDATED-BRANDING.pdf
[16] https://www.nytimes.com/2022/08/16/business/new-york-real-estate-climate-change.html

thousands of buildings across California. Committing to a decarbonization strategy across the State's portfolios will enable the state to proactively plan for upgrades at equipment end of life to most cost effectively implement decarbonization. The State can then benefit directly from decarbonization measures, accelerate the market for skilled labor and equipment, use buildings as training for government employees and others, and create high road jobs. Possible CEC actions could include working with DGS to understand overall compliance with state-owned building benchmarking efforts and identifying how to improve that compliance, supporting updates to the state's Green Building Action Plan that commit to a state building BPS and expand sustainability goals to state-leased buildings, and providing information and data to support a new executive order committing the state to a BPS for its state-owned and state-leased buildings.

The CEC can develop policies to protect low-income tenants from costs associated with decarbonization, including providing subsidies to affordable housing providers. CEC should work with the Department of Housing and Community Development (HCD) to identify appropriate funding levels, means of distributing funding, and appropriate policies to support the distribution of funds. To the extent that funds for affordable housing are driven by ratepayer-funded programs, CEC should also work with the California Public Utilities Commission (CPUC) to ensure that these efforts do not count against cost-effectiveness of utility portfolios, that they are not prohibited from continuing even in the face of requirements for these buildings to decarbonize, and that the programs incorporate the kind of tenant protections the CEC believes are important.

The CEC can convene local governments and facilitate alignment in benchmarking and building performance requirements at the regional level to limit market confusion. The state can also provide support to smaller jurisdictions with limited resources to develop policies and hire outside consultants.

The CEC could take the lead on developing the digital infrastructure to enable effective demand management. There are multiple market barriers to doing this at a more local level, including a lack of standards and requirements for equipment to enable interoperability. The state is positioned to lead on developing and requiring such standards.

8. Given the time and location dependance of both the cost and greenhouse gas emissions of electricity, how can building performance strategies be structured to incorporate load flexibility benefits?

Load flexibility allows buildings to shift electricity use from times of day when it is expensive, polluting, or experiencing high demand to times when it is cheaper and/or cleaner. Load flexibility, also referred to as load management or demand flexibility, can reduce site energy bills and greenhouse gas emissions, while also making the grid more stable, resilient, reliable, and safe. A BPS that uses hourly CO2e Greenhouse Gas Intensity (GHGI) or grid carbon impact will encourage load flexibility by owners. Similarly, incentives that require load flexibility, participation in DR programs, and storage, can increase uptake and likelihood that upgrades completed on a pathway to BPS compliance result in increased load flexibility. Load flexibility can also reduce grid peak loads which would otherwise require grid infrastructure investments that can lead to higher rates. Effective load flexibility to support the grid will also require two-way communication between buildings, aggregators, and utilities.

Resilience, load management/demand flexibility, and decarbonization need to be seen as interwoven goals. To achieve these goals at scale will require significant upgrades to the digital infrastructure supporting the energy system from buildings to the grid.[17] Some utilities, including the International Energy Agency in the UK, are moving toward a digital network to provide real-time two-way communication and demand management. This approach has had more limited uptake in the US but could be achieved based by identifying minimal standards for interoperability across appliance, controls, etc.

And the data must be available for jurisdictions to require it in a BPS. Over the past two decades, utilities in California have installed advanced metering infrastructure (AMI) that allows for near real-time electricity use monitoring and analysis.[18] AMI empowers building owners and occupants to monitor and manage their energy use to meet their economic and environmental goals. In 2019 the CEC received new authority to adopt standards for appliances to facilitate the deployment of flexible demand technologies.[19] In 2022, the CEC adopted amendments to the state's load management standards (California Code of Regulations, Title 20, Sections 1621-1625)[20] and created MIDAS to provide machine readable access to utilities' time- varying rates, greenhouse gas emission signals, and California Independent System Operator (California ISO) FlexAlerts.[21] AMI and MIDAS allow electricity customers to sign up for highly dynamic rates, such as those required by the load management standards, that can save money for customers able and willing to shift load away from peak hours that generally correspond to times when the grid has a higher GHG footprint due to the reduction of clean renewable energy. Through these regulations and related policies, California is building a statewide system that automates the publication of time and location-dependent signals to be used

[17] "Reimagining the Grid", Edison International, https://www.edison.com/clean-energy/reimagining-the-grid
[18] https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/infrastructure/the-benefits-of-smart-meters
[19] CEC Flexible Demand Appliances Proceedings, https://www.energy.ca.gov/programs-and-topics/topics/load-flexibility/load-management-standards
[20] CEC Load Management Standards, https://www.energy.ca.gov/programs-and-topics/topics/load-flexibility/load- management-standards
[21] https://www.energy.ca.gov/proceedings/market-informed-demand-automation-server-midas

by end-use automation technologies to provide real-time load flexibility on the electric grid.

The CEC, with the Department of Energy (DOE), should also consider integration of aggregated hourly GHG emissions data within Energy Star Portfolio Manager (the primary tool in use for Benchmarking data).

A BPS should take advantage of this data in drafting ordinances and designing supportive programs that value load flexibility.

9. How should measure cost effectiveness be incorporated into building performance strategies or requirements? How should cost effectiveness be determined?

There are many types of cost-effectiveness tests. Beyond reductions in electricity and natural gas usage, a BPS will bring a reduction in carbon and criteria pollutant emissions, and any cost-effectiveness test should account for these broader societal benefits. U.S. EPA, CARB, and CPUC have assigned different dollar amounts to carbon, methane, and NOx reductions that should be incorporated into the consideration of cost-effectiveness for BPS. As it relates to question 8, mitigating grid impacts through load flexibility improvements should also be accounted for and incorporated into considerations of cost-effectiveness.

In the context of policy development, it is also important to note that cost-effectiveness metrics do not incorporate equity considerations. DOE has recently released guidance on integrating distributional equity in cost benefit analysis.[22] The CEC can assess the equity implications of current cost-effectiveness measurements and incorporate more holistic approaches that take disparities at the local level into account.

Large scale decarbonization of existing buildings, as a pathway to compliance with BPS or other requirements, will demand significant investment. Not all measures will pass traditional cost-effectiveness tests or ROI minimums. Additional metrics will likely be needed, including consideration of the cost of inaction on decarbonization as a baseline. From that perspective, alternative pathways can be designed that have the highest relative cost effectiveness compared with the costs of doing nothing.

There are some current BPS that set a cost-effectiveness threshold for required implementation of energy efficiency measures. Washington State's Clean Buildings Performance Standard consists of ASHRAE Standard 100 (2018) with state amendments to the standard (WAC194-50).[23] One pathway to compliance with the CBPS requires both an audit and implementation of cost-effective measures, as determined by life cycle cost analysis as defined in Annex X. This approach is rigorous and offers a

[22] "Distributional Equity Analysis for Energy Efficiency and Other Distributed Energy Resources", https://www.energy.gov/sites/default/files/2024-05/bto-distributed-equity-analysis-guide_may2024.pdf
[23] https://apps.leg.wa.gov/wac/default.aspx?cite=194-50-140

consistent methodology appropriate and accessible to certain buildings. Boulder, CO and Washington, D.C. also provide an exemption to installation of non-cost-effective measures.

If owners are provided with consistent, reliable, clean data about their buildings, as well as technical assistance that supports their deliberation on measure prioritization, they can select measure packages that provide performance-based BPS compliance and support their own needs, such as management of deferred maintenance. Cost-effectiveness may not need to be incorporated, except potentially in providing exemptions for cases of extreme hardship.

10. For future building performance policies, how can the state manage and minimize administrative costs to the state and local governments while maximizing building performance improvements?

As noted in question 6 above, there is immense opportunity for regional (if not statewide/national) pooling of resources in the form of shared compliance planning and model code language. Similarly, there is potential for administrative savings through cross-jurisdictional collaboration on supportive program design and implementation, as long as flexibility exists to address local needs. The state could look to the Low-Income Weatherization Program (LIWP) and other programs to understand implementation successes and challenges of large-scale, no-cost direct-install programs.

The state can also support jurisdictions in designing rounds of compliance that stress-test, then enhance, jurisdictional capacity to effectively implement and enforce their BPS. Thoughtful compliance tranches would also allow the opportunity for process improvements in advance of the most sensitive and least-resourced categories of buildings being addressed.

11. What considerations or protections should the CEC be aware of to ensure minimal impacts to housing affordability and other potential disruptions for multifamily tenants that may result from a statewide building performance standard?

The state should ensure there is no net increase in tenant cost due to BPS compliance, as drafted in SB-48, wherein rent increases are only allowable as a match to reductions in customer utility cost. This may require changes to California's Tenant Protection Act of 2019 (Civil Code sections 1946.2, 1947.12-1947.13) to prohibit landlords from passing through the cost of improvement beyond the savings the tenant can reasonably be expected to incur. Also ensure that tenant reporting of violations is streamlined and integrated with other rental protections, potentially via existing state agencies. The CEC should work with the Attorney General's office to identify appropriate enforcement mechanisms to prevent tenants from being unfairly burdened with the building owner's cost of BPS compliance.

The language included in SB-48 is a good start; highlights below:

- *"(4) While improvements in building energy efficiency are salutary, they should not be achieved at an undue cost to tenants, particularly those tenants who are vulnerable to formal or informal eviction, displacement, harassment, or rent increases, if state and local strategies to achieve those energy efficiency improvements are not properly designed."*
- *"The commission shall do all of the following:*
    - *(1) Avoid increasing utility and rental cost burdens for, or causing evictions, harassment, or displacement of, tenants of covered buildings. For purposes of this paragraph, the commission shall consider including the following requirements as part of the strategy:*
        - *(A) Requirements to prohibit a renovation to a covered building that is required by the strategy from being a basis for terminating a tenancy and to ensure that any temporary relocation costs resulting from the renovation is paid for by the covered building owner.*
        - *(B) Requirements to prohibit an increase in rent for a tenant as a result of a renovation to a covered building that is required by the strategy or to limit the increase in rent to the long-term energy savings to a tenant resulting from the renovation."*

The state should also refer to "Decarbonizing California Equitably: A Guide to Tenant Protections in Building Upgrades/Retrofits Throughout the State"[24] which offers a comprehensive list of recommended policies including limitations of pass-through costs, no-fault evictions, temporary displacements and other measures.

[24] "Decarbonizing California Equitably: A Guide to Tenant Protections in Building Upgrades/Retrofits Throughout the State", https://www.saje.net/wp-content/uploads/2023/09/Decarbonizing-California-Equitably-Report-1.pdf

12. Please submit any additional comments, issues, references, models, recommendations, or other information that you believe is relevant to the development of the California Building Energy Performance Strategy Report.

Attribution

The state has ambitious goals for energy and GHG reductions, and BPS will be a powerful tool in achieving those goals. The question of attribution must be addressed as it relates to counting of savings from this tool toward the State's decarbonization and energy efficiency goals. SB 350 calls for a doubling of energy efficiency. The CEC is responsible for tracking of and determining compliance with these goals. Both investor-owned and large publicly owned utilities provide integrated resource plans (IRPs) that in part demonstrate progress and planning for meeting the state's SB 350 goals. Currently these IRPs do not incorporate the potential savings or potential changes in electricity demand from statewide or local building performance standards, which would have significant effects on utility planning. In addition, as utilities work to support a BPS or improvements in the benchmarking program, they will need clear direction from the CPUC and CEC on how to account for that work in their IRPs to demonstrate compliance with and progress toward the SB 350 goals. Although a BPS would not change the SB 350 goal itself, utilities need a clear understanding and method of accounting for how a BPS will affect the utility's own contribution toward that target. Some questions to consider are: Is the BPS part of the utility's programs to achieve SB 350? Is it a "non-utility" program that is additional to the work the utilities provide? Would a utility's support for compliance with a BPS or for affordable housing retrofits to meet a BPS count toward the utility's SB 350 targets? To the extent that the BPS is greenhouse-gas emission based instead of energy-based, will that require a reassessment of SB 350 based on a projected increase in electricity demand?

Additionally, BPS can impact both utility Codes & Standards programs and energy efficiency incentive programs. The California IOUs have been engaged in compliance improvement efforts and have supported local jurisdictions as they consider, design, and implement their reach codes. The state should ensure that IOUs can similarly support local BPS efforts, and that their funding and success be tracked accordingly. The scale of investment to achieve widespread BPS implementation will be immense, and limiting available energy efficiency funding would be detrimental to all owners, in particular the most under-resourced building types such as affordable multifamily housing.

Thus, we suggest early engagement with the CPUC on how to account for utility activities to support BPS in their IRPs as well as in their energy efficiency portfolio planning.

We also recommend engaging with the CPUC to ensure that ratepayer funds remain available to provide incentives and other programmatic support to building owners who are retrofitting or taking other steps to comply with a BPS. Three CPUC decisions were helpful in providing assurance on this issue of "free-ridership" that could be replicated for a BPS:

1. In Decision 23-04-035[25], the CPUC expanded the scope of the Codes and Standards program to support the state's broader clean energy goals, including transportation electrification and building decarbonization. In that decision, the CPUC notes that "*Because the CEC's building and appliance standards and other regulations address transportation electrification and building decarbonization, the IOUs' Codes and Standards programs and subprograms must support these broader clean energy goals, in addition to their ongoing support of the clean energy goals being advanced by other state agencies."*

2. In Decision 21-12-030[26], the CPUC corrected an earlier decision by removing the word "local" from the following criteria for electric utility investments in transportation electrification infrastructure: "*…must exclusively support infrastructure that exceeds existing state* ~~***and local***~~ *EV infrastructure requirements…".* This change allowed the electric utilities to support investment that exceeded state EV requirements, but not stricter local reach codes.

3. In Decision 09-05-037[27], the CPUC responded to comments from City and County of San Francisco that CPUC policy at the time disadvantaged residents and businesses in reach code jurisdictions, by setting a higher baseline and thus making them ineligible for energy efficiency programs.

   a. In Conclusion of Law #6 the CPUC directed that:

   "We agree with CCSF that local ordinances that exceed state codes and standards can and should be part of carefully planned campaigns for market transformation. Therefore, incentives and savings in communities with "reach" requirements should be no different from those in other communities, and not be treated as free riders. In future energy efficiency funding cycles, we expect Energy Division staff will consult with the Utilities and other stakeholders to determine a framework for determining when "reach" mechanisms have become mainstream and markets are sufficiently transformed as to warrant the suspension of current efficiency incentive programs.''

   b. And in Ordering Paragraph #4:

   "The proposal of Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, and San Diego Gas & Electric Company to change attribution rules regarding savings credit for actions taken by customers supported by Utility programs, but who may also be motivated by external factors, is denied. However, incentives and savings in communities with "reach" building codes or similar efficiency requirements shall be no different from those in other communities, and shall not be treated as free riders."

Alignment Between State and Local BPS

With several California jurisdictions already in the process of drafting BPS legislation, it is possible there will be additional local requirements by the time the CEC develops its SB-48 strategy. Jurisdictions should not be discouraged from drafting local ordinances. There are already examples of jurisdictions subject to both local

[25] Decision 23-04-035, https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M505/K808/505808197.PDF
[26] Decision 21-12-030, https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M432/K639/432639327.PDF
[27] Decision 09-05-037, https://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/101543.PDF

and statewide BPS requirements: Washington State and City of Seattle each have a BPS, as do Colorado and City of Denver. These jurisdictions are addressing misalignment in metrics and other technical details (such as treatment of renewable energy credits (RECs)). The CEC should consider policies analogous to current base and reach codes, which allow local governments to adopt more stringent requirements. And in the case of stricter statewide requirements, the CEC may consider a grace period for integration with the statewide requirements, or even an exclusion for those who adopt BPS in advance of a statewide policy, given the potential adoption of new local codes before August 2026.