



Cal TF Draft Technical Position Paper #8: Preponderance of Evidence for Early Retirement Projects

I. Background/Overview

The California Public Utilities Commission (CPUC) has established a “preponderance of evidence” standard for California administrators and implementers who want to claim that a measure was removed through “early retirement” (ER) rather than “replaced on burn-out” (ROB) for both custom and deemed measures. To meet the “preponderance of evidence” standard, the Commission requires that evidence be presented on two factors: program influence and equipment viability¹ (showing that the replaced equipment would have lasted another year after replacement).

“The evidence consists of two basic components, program influence and continued viability of existing equipment.”

Although the standard and evidentiary requirements exist, it has been extremely difficult for both custom projects and deemed measures to meet the evidentiary requirements in practice to the satisfaction of Commission staff. This session is to review current Commission evidentiary guidelines for meeting the “preponderance of evidence” standard for early retirement claims, and to consider evidentiary requirements so that the standard can be met in practice. The specific questions for this group are:

1. What evidence should be sufficient to meet the Commission’s two evidentiary requirements?
2. *How much* evidence should be sufficient to meet the Commission’s two evidentiary standards?

The strawman proposals, below, in Section IV, applies to both custom projects and deemed measures.

II. Preponderance of Evidence Standard

The phrase “preponderance of evidence” is a long-standing legal “burden of proof” standard with a clear meaning, which is:

- The “proposition” is more likely to be true than not true
- If there is a 51% chance than the proposition is true
- “More probable than not”

¹ *Early Retirement Using Preponderance of Evidence*, July 16, 2014, SCE/CPUC, avail: <http://cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=5325>

The application of this principle to energy efficiency “early retirement” claims can be phrased as follows:

The Program Administrator or implementer must show:

Program Influence:

- The retrofit is more likely than not to be the result of program influence
- There is a 51% chance that the retrofit resulted from program influence
- It is “more probable than not” that the retrofit resulted from program influence

Equipment Viability

- The equipment is more likely than not to have lasted at least another year after replacement
- There is at least a 51% chance that the existing equipment would have lasted another year.
- It is “more probable than not” that the existing equipment would have lasted another year.

III. Current CPUC Practice²

CPUC guidelines, developed in the context of custom projects, provides a list of evidence that can be considered to establish the two require evidentiary factors:

1. Program Influence

- Customer/program administrator history—meeting dates, participants, substance.
- Simple payback calculations
- Documentation of non-EE project drivers
- Customer “normal replacement practice”
- Documentation of standard efficiency alternatives available in market
- Customer statements regarding intent to continue using existing equipment

2. Operational Functionality with One Year RUL

- Preliminary measurements on existing equipment showing that it is operating and meeting the service required
- Existing equipment installation dates (invoices if available) or last major overhaul (e.g boiler retubing, chiller barrel overhaul)
- Critical system components, associated maintenance practices, current and future availability of replacement parts
- Proposed RUL supported by evidence

² *Early Retirement Using Preponderance of Evidence*, July 16, 2014, SCE/CPUC, avail: <http://cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=5325>

- Normal lead time for project implementation (planning, ordering, etc.)—this time is subtracted from RUL
- Customer statements regarding viability of equipment

IV. Proposal for Discussion and Brainstorming on Meeting the Evidentiary Requirements for the “Preponderance of Evidence Standard” in Early Requirement Claims for Custom and Deemed Projects

1. Custom Projects: Proposed Evidentiary Requirements

Program Influence

- Analysis that shows that cost to replace is greater than cost to repair
 - *Per legal definition of standard, should cost differential only be 1%?*
- Customer/program administrator history illustrating Early Retirement program offering—meeting dates, participants, substance.
- Customer “normal replacement practice” of other similar equipment
 - *Should previous utility-incented replacements be disregarded?*
- Customer statements

Operational Functionality

- Evidence of previous repairs (history of repair)—i.e. invoices, pictures of internal inventory of replacement parts, customer letter indicating routine maintenance (quarterly/annually) practices, scope of work for maintenance contractors
- Visual inspection of equipment to confirm equipment is still operational (e.g. no fluid leaks, no rusting, normal sound of operation)
 - *Who would perform this inspection?*
- Preliminary measurements on existing equipment
 - *What is an acceptable level of service?*
 - Idea for generalized language: “HVAC maintaining desired space comfort, process meeting production demands.” Should this language account for amount of labor necessary for equipment to meet level of service?
- Availability of repair options—i.e. existence of motor rewinding industry, internal inventory of replacement parts, replacement parts readily available for purchase

2. Custom Projects: Proposed amount of evidence

- 1) Numeric Approach: Providing two types of evidence of Operational Functionality and one for Program Influence should satisfy the standard.
- 2) Matrix Approach: Create a matrix of criteria, perhaps along the lines of the evidence types outlined below. Projects can be assigned points under each criterion and

approval can be automatically granted after a minimum number of points have been awarded.

3. Deemed Projects: Proposed Evidentiary Requirements for Early Retirement Claims for Workpaper Development

In California, a measure must be developed as an “early retirement” measure during workpaper development for administrators and implementers to claim early retirement during program implementation. There is *no* site specific or customer specific information about measures during workpaper development. Furthermore, much less customer-specific and site-specific information is collected during deemed measure installation compared to a custom project. Thus, evidentiary requirements *must* be modified and simplified for deemed measures. Workpaper developers could seek to meet the evidentiary requirements for the class of measures, without needing to collect site-specific information during program implementation (for program influence, not equipment viability), OR the workpaper would need to identify specify site-specific information that would need to be collected during program implementation to demonstrate program influence. The proposed evidentiary standards for deemed measures uses as a starting point the existing Commission guidelines to the extent they would reasonably apply to deemed measures, as follows:

1) Program Influence

- Description of market barriers, and how program design will overcome market barriers. Workpapers must include some information about current barriers, and provide an explanation of how the program design will address the market barriers.
 - i. Documentation: simple market survey of distributors, trade allies and customers
- Documentation of non-EE project drivers
 - i. Documentation: simple market survey of distributors, trade allies and customers
- “Normal replacement practice” for this measure –
 - i. Documentation: simple market survey of distributors, trade allies and customers
- Documentation of standard efficiency alternatives available in market
 - i. Documentation: Simple market survey of distributors or shelf stocking practices.
- Simple payback calculations
- Other reasonable criteria to demonstrate that measures are only likely to be replaced early due to program influence

2) Equipment Viability – For deemed measures, the requirement of showing the equipment is working *and likely to continue working for another year had it not replaced* would be difficult to demonstrate given the amount of information

collected in a typical deemed project, and is furthermore a very subjective evidentiary requirement. Thus, the evidentiary requirement should be reformulated to be consistent with common practice in other jurisdictions for meeting an early requirement claim, which is that the measure is: *“installed and operating”*

- Existing equipment is operating and meets the required service
 - i. Documentation: This information would need to be a program requirement, and evidence would need to be collected during program implementation (such as a photo of the measure)

Note:

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Prior Versions	