

**BEFORE THE PUBLIC UTILITIES Commission
OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (U 338-E) for Approval of Energy Efficiency Rolling Portfolio Business Plan.	Application 17-01-013 (Filed January 17, 2017)
Application of San Diego Gas & Electric Company (U 902-M) to adopt Energy Efficiency Rolling Portfolio Business Plan Pursuant to Decision 16-08-019.	Application 17-01-014 (Filed January 17, 2017)
Application of Pacific Gas and Electric Company for Approval of 2018-2025 Rolling Portfolio Energy Efficiency Business Plan and Budget (U 39-M).	Application 17-01-015 (Filed January 17, 2017)
Application of Southern California Gas Company (U 904-G) for adoption of its Energy Efficiency Rolling Portfolio Business Plan and related relief.	Application 17-01-016 (Filed January 17, 2017)
In the matter of the Application of Marin Clean Energy for Approval of its Energy Efficiency Business Plan.	Application 17-01-017 (Filed January 17, 2017)

**NATIONAL ASSOCIATION OF ENERGY SERVICE COMPANIES
COMMENTS ON THE NOVEMBER 13, 2017 PROPOSED DECISION
ADDRESSING THIRD PARTY SOLICITATION PROCESS FOR ENERGY
EFFICIENCY PROGRAMS**

Donald Gilligan
President
NAESCO
1615 M Street NW
Washington, DC 20036
Phone: 978-498-4456
E-mail: dgilligan@naesco.org

December 4, 2017

**BEFORE THE PUBLIC UTILITIES Commission
OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (U 338-E) for Approval of Energy Efficiency Rolling Portfolio Business Plan.	Application 17-01-013 (Filed January 17, 2017)
Application of San Diego Gas & Electric Company (U 902-M) to adopt Energy Efficiency Rolling Portfolio Business Plan Pursuant to Decision 16-08-019.	Application 17-01-014 (Filed January 17, 2017)
Application of Pacific Gas and Electric Company for Approval of 2018-2025 Rolling Portfolio Energy Efficiency Business Plan and Budget (U 39-M).	Application 17-01-015 (Filed January 17, 2017)
Application of Southern California Gas Company (U 904-G) for adoption of its Energy Efficiency Rolling Portfolio Business Plan and related relief.	Application 17-01-016 (Filed January 17, 2017)
In the matter of the Application of Marin Clean Energy for Approval of its Energy Efficiency Business Plan.	Application 17-01-017 (Filed January 17, 2017)

**NATIONAL ASSOCIATION OF ENERGY SERVICE COMPANIES
COMMENTS ON THE NOVEMBER 13, 2017 PROPOSED DECISION
ADDRESSING THIRD PARTY SOLICITATION PROCESS FOR ENERGY
EFFICIENCY PROGRAMS**

Pursuant to Rule 2.6 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the National Association of Energy Service Companies (“NAESCO”) hereby submits its comments on the November 13 proposed “Decision Addressing Third Party Solicitation Process for Energy Efficiency Programs” (Proposed Decision). NAESCO appreciates the opportunity that the Commission and the staff have given stakeholders to submit multiple comments on the key issues in this proceeding, as well as the opportunity to submit these comments.

Summary

NAESCO's comments on the Proposed Decision (PD) are summarized as follows.

1. The PD arbitrarily extends the implementation date for the 60 percent minimum of programs that are designed and implemented by third parties from 2020 to 2022, with no basis for this dramatic change in the record.

2. The PD does not provide sufficient guidance to the IOUs in critical areas.

3. The Commission should adopt an Independent Evaluator (IE).

4. In addition to an IE, the Commission should allow experienced implementers to be part of the PRGs and have input on the critical elements of the process, including standard contract design, the bidding process and the implementation of effective programs.

5. NAESCO believes that the existing bidding schedule outlined in the PD (page 8 and page 29) is unnecessarily long -- 12-20 months and should be circumscribed to 12 months.

6. NAESCO believes that the PD's proposal for standard Terms and Conditions for all third party (pages 38-39) contracts is impractical due to the many differences among the various market sectors and the implementers within them.

7. The discussion of EM&V requirements (Pages 40-41) is also problematic, again because of the significant variation in implementer experience and capabilities.

8. The discussion of Pay-for-Performance (Page 40) is confusing and subject to the same disparities between market sectors as contract Terms and Conditions and M&V, discussed above.

9. The PD postpones addressing critical issues with respect to workpapers to the next phase of the proceeding (page 43), which forces IOUs and implementers to either limit innovative measures or risk the *post hoc* disallowance or savings de-rating of innovative measures.

Discussion

NAESCO's arguments in support of its comments are provided below.

1. The PD arbitrarily extends the implementation date for the 60 percent minimum of programs that are designed and implemented by third parties from 2020 to 2022, with no basis for this dramatic change in the record.

During the extensive sets of comments in this proceeding, no party even raised the issue of delaying the implementation of the 60 percent minimum. D. 16-08-019 that established the 60 percent minimum was issued well over a year ago. Through the CAEEC process, all parties have been planning on for this new approach to program design and implementation. As the PD notes (pages 28 and 29) the IOUs filed business plans, now almost a year ago, that explained how they would comply with the 60 percent minimum. Furthermore, both PG&E and SCE stated that they are willing and able to exceed the 60 percent minimum.

As the PD notes, there is “a great deal of capacity” in the non-IOU energy efficiency community (page 29). One of the principal reasons that the Commission ordered an increase in third-party designed and implemented programs is the need for the innovation that the third parties bring. The arbitrary and unsupported delay in the third-party implementation proposed by the PD would result in less innovation and should be rejected in favor of the 60 per cent minimum by 2020 as ordered by D.16-08-019.

2. The PD does not provide sufficient guidance to the IOUs’ in critical areas.

NAESCO and other parties commented that the IOUs' applications are far too prescriptive in program design. The PD does not appear to directly address this issue. The Commission should not simply approve the IOUs’ bidding plans as filed, as this will not bring innovation to important sectors of the IOUs’ markets.

The residential downstream market is particularly in need of innovation. The Commission should order the IOUs to include in their solicitations a statewide solicitation for a third-party designed and implemented residential Pay-for-Performance (P4P) program in 2018. Because of the lack of opportunities for innovation in California for the past five years, the state is lagging behind other states in introducing innovative programs in the residential market sector. NAESCO believes that the Commission should direct the IOUs to focus on residential end use technologies that have been successfully implemented in other jurisdictions (*e.g.*, the Northwest) but as yet have not been adopted in California, such as ductless heat pumps or heat pump water heaters. The Commission should also order each PA to implement a new program for hard to reach and underserved ratepayers in manufactured homes (MH), another market segment that has been largely neglected in recent years. The Commission should order each IOU to issue an RFA

for a third-party designed, administered and implemented MH program. As with all RFAs and RFPs, the IOUs should not restrict third parties in either program design or budget.

3. The Commission should adopt an Independent Evaluator (IE).

All parties (except SoCal Gas) agreed upon the need for IEs, to ensure that the IOUs are conducting truly open, fair solicitations. The PD's proposal to rely on PRGs and staff to review RFA results and RFP scopes of work will result in poor oversight and program delays. Expecting PRGs to review dozens (at least) of RFA results is unrealistic. In the past, PRG members said that they did not have the resources to provide that function, which is why an IE is needed now. The IEs will assist the PRGs in reviewing processes and results to ensure fair outcomes. This does not require a report for every contract, but IEs should write a report to the Commission at the end of each year, with evaluations and suggestions for possible improvements. Using IEs with significant energy efficiency experience to review results and processes will result in greater assurance of adherence to Commission policy, truly open bids, and faster approval of new programs. Since, at least in the short run, the IOUs will contract with the IEs, the Commission should adopt the protections that NRDC proposes: (1) the IEs report to the Energy Division and the PRG instead of the IOUs; and (2) the approval of invoices be delegated to a non-IOU entity (or non-contract holder) as is the case with the CAEECC facilitator.

4. In addition to an IE, the Commission should allow experienced implementers to be part of the PRGs and have input on the critical elements of the process, including standard contract design, to the bidding process and the implementation of effective programs.

NAESCO has experience of unnecessary delays that can result from not taking advantage of expert input. In the early 2000s, without input from the ESCOs, The New York Energy Research and Development Authority (NYSERDA), which was charged by the New York Public Service Commission (PSC) with implementing ratepayer-funded EE programs, initiated a program that was designed to provide incentives for large C/I retrofits and catalyze the development of a robust ESCO industry in the state. The program had design flaws so significant that after a year it had zero participation.

NAESCO suggested a set of changes that streamlined the program application, approval and M&V processes without changing program economics. NYSERDA adopted the

modifications NAESCO suggested, and the program was fully subscribed for the next decade, very cost effective, and drew participation from more than 200 ESCO companies (only about 10 of which were NAESCO members). There was no conflict of interest in NAESCO's input, because all parties – NYSERDA, the NY PSC and the ESCOs – shared the goal of implementing a cost-effective program that attracted customer participation. But the exclusion of the implementers' input in the program design phase wasted a year and needlessly frustrated NYSERDA, the PSC, the ESCOs and the customers.

5. NAESCO believes that the existing bidding schedule outlined in the PD (page 8 and page 29) is unnecessarily long -- 12-20 months and should be circumscribed to 12 months.

To this extended schedule, the PD adds (1) an unspecified time for the development of the standard contracts (which have to be ready before the solicitations start so that implementers know what they are bidding on); (2) an unspecified amount of time for the development of sector-specific EM&V standards (which also have to be in the solicitation); plus, (3) an unspecified amount of time for the ED review of the RFAs and scopes of work of the RFPs. The full process could easily take 2 additional years until the first retrofit is implemented.

The Commission should shorten this very extended time frame. Keeping the time frame currently being proposed, energy savings goals will not be met, customers will be left without EE programs and many potential implementers will forego participation in California programs, because they cannot support such extended transaction cycles. NAESCO believes that the Commission can significantly shorten the process of solicitation development by (1) directing the IOUs to make the entire solicitation and implementation process 12 months at the maximum, rather than 20 months; (2) requiring that implementers propose EM&V plans as part of their program designs, rather than waiting until the ED develops EM&V standards; or, (3) ordering the utilities to prioritize bid solicitations for market sectors that already have ED-approved EM&V methodologies (*e.g.*, the IPMVP for large C/I and institutional customer)s, while the EM&V standards for other market sectors are being developed.

6. NAESCO believes that the PD's proposal for standard Terms and Conditions for all third party (pages 38-39) contracts is impractical due to the many differences among the various market sectors and the implementers within them.

The PD seems to envision the development of a single contract template that would be usable across all programs and all market sectors. NAESCO respectfully suggests that there are significant differences between sectors that must be recognized.

Programs involving comprehensive, multi-technology projects in the large C/I and institutional market sectors are delivered by ESCOs or relatively sophisticated contractors that have significant legal resources who are experienced in negotiating relatively complex contracts. For example, the ESCO industry has standard contract templates, developed by the US Department of Energy, the Federal Energy Management program, the Army Corps of Engineers, that have been used to implement thousands of guaranteed savings projects at federal facilities, worth almost \$60 billion dollars, over the past two decades.

Residential and small C/I programs, on the other hand, are typically delivered by small contractors that may not fully understand the financial and performance risk involved in the performance-type contracts being contemplated. Under the types of contracts that we expect the IOUs to issue, which would pass their energy savings target goals to the 3P implementers, we are concerned that performance risk may be transferred inappropriately. These small contractors are used to working as subcontractors in utility-designed and implemented programs, in which the penalty for non-performance is typically being thrown out of the program, not company or personal (due to personal guarantees backing the company) bankruptcy for failure to meet contracted performance targets. This concern over proper risk sharing might be remedied by the IOUs soliciting bids from aggregators, rather than individual contractors, but contracts with aggregators of small projects will be substantially different from contracts with ESCOs and large contractors, and require a higher level of oversight from the PRG and IE, to ensure a fair allocation of risks between the aggregator and the small contractors, and to stop the aggregators from passing all of those risks through to the small contractors who may not fully understand them or be able to bear that level of risk.

NAESCO therefore suggests that the PD proposal (page 39) for a single workshop to discuss standard Terms and Conditions is unrealistic. A series of workshops specific to each market sector will be necessary to address all the issues in the 3P contracts used in various market sectors. The IOUs should seek implementer input on standard Terms and Conditions for

each market sector, and then propose sector-specific standard Terms and Conditions to the ED for review and approval.

NAESCO cautions that that the default position of the IOUs, and of the Commission (PD pages 36-38) seems to be to make the EE contract Terms and Conditions look like supply-side Terms and Conditions. There are better ways for the Commission and the IOUs to protect the interests of ratepayers than to impose onerous performance and financial security contract terms that will stifle innovation and discourage EE implementers from participating in the market. These include mechanisms like Standard Performance Contracts and building a safety margin into EE procurements (*e.g.*, targeting the acquisition of 110% of the EE goal).

7. The discussion of EM&V requirements (Pages 40-41) is also problematic, again because of the significant variation in implementer experience and capabilities.

ESCOs are experienced in using the IPMVP (which is on the list of M&V protocols acceptable to the staff) for long-term project M&V. However, residential and small C/I implementers usually cannot afford to use IPMVP for a single site, and so have used statistical survey methodologies. The PD solution seems to be to run everything through staff review process, which will limit innovation in technologies and methodologies to the boundaries of staff expertise, which, as one participant in the January 2016 Commission Workshop on AB 802 implementation said, is perhaps a decade behind the leaders in information technology that the Commission hopes to attract as suppliers to the EE portfolio.

8. The discussion of Pay-for-Performance (Page 40) is confusing and subject to the same disparities between market sectors as contract Terms and Conditions and M&V, discussed above.

ESCOs are comfortable, as the PD says, getting paid for delivered kWh over time, because they have established vehicles and the expertise required to finance billions of dollars' worth of P4P contracts over 10-20-year terms. Implementers in other market sectors do not have the necessary experience and expertise. The Commission should allow the IOUs flexibility to negotiate pay-for-performance terms with implementers based on market and individual conditions, with oversight provided by the PRG and IE.

9. The PD postpones addressing critical issues with respect to workpapers to the next phase of the proceeding (page 43), which forces PAs and implementers to either limit

innovative measures or risk the *post hoc* disallowance or savings de-rating of innovative measures.

The PD simply states “In the meantime, the program administrators are encouraged to accept third party workpaper development and submissions.” Given the importance of work papers for new, innovative measures, the PD should be reworded to read that program administrators "must" accept third party workpapers, which would then be subject to Energy Division or CalTF review and approval.

Conclusion

NAESCO appreciates the opportunity that the Commission and the staff have given stakeholders to these comments, and we urge the Commission to hold and substantially modify this PD to:

1. Restore the 2020 deadline for the IOUs to contract a minimum of 60% of their portfolios to 3Ps;
2. Provide additional guidance to the IOUs on 3P programs, with particular focus on the need for innovative 3P programs in the residential and multi-family market segments;
3. Adopt Independent Evaluators (IE);
4. Allow implementers and/or their representatives to participate in the PRGs, to ensure that the bid solicitations, standard contract templates, and other key program elements facilitate, rather than impede, the accomplishment of Commission goals;
5. Shorten the bidding and implementation schedule and order the IOUs to prioritize the bidding of programs that do not require the development of program components such as EM&V and P4P project financing;
6. Order the IOUs, with the collaboration of other stakeholders, to develop standard contract templates that are optimized for each market segment; and,
7. Order the IOUs to accept Workpapers for new measures, subject to review and approval by the ED or the CalTF.

Respectfully submitted by,

A handwritten signature in black ink, appearing to read 'Donald Gilligan', with a long horizontal stroke extending to the right.

Donald Gilligan
President, NAESCO
1615 M Street NW, Washington, DC 20036
Phone: 978-498-4456
E-mail: dgilligan@naesco.org