

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

**Order Instituting Rulemaking to Examine
the Commission's Post-2008 Energy
Efficiency Policies, Programs, Evaluation,
Measurement, and Verification, and Related
Issues.**

**Rulemaking 09-11-014
(Filed November 20, 2009)**

**REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF ENERGY SERVICE
COMPANIES (NAESCO) ON THE ADMINISTRATIVE LAW JUDGE'S
RULING REGARDING PROGRAM GUIDANCE FOR THE
2013-2014 ENERGY EFFICIENCY PORTFOLIO**

Submitted by:

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January 6, 2012

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NAESCO appreciates the opportunity to offer Reply Comments on the Comments of other parties in the above-named proceeding.

**Without Clarification About Scope and Available Resources, NAESCO Cannot
Estimate How Much Program Design Work Can be Realistically Accomplished During the
Next Few Months**

NAESCO concurs with the comments of other parties that some program redesign can be accomplished during the next few months and redesigned programs implemented during the Bridge Period. However, we cannot estimate how much can be realistically accomplished without further clarification by the Administrative Law Judge (ALJ) as to the scope and focus of the prospective work (see below) and some transparency about the resource capabilities of the Energy Division (ED) going forward. As several parties noted in their comments, the ED already has a large accumulated backlog of program and technology Workpapers and Calculated Project *ex ante* savings reviews. The proposed ED program redesigns would seem to add significantly to the ED workload, without any description of how ED expects to do this work in a timely fashion particularly as there is no associated request for increases in division budget and staffing. If the ALJ intends that parties assess what can be done given no enhancement to the existing ED capabilities, NAESCO would have to answer “very little.”

Major Questions not Addressed in Comments

NAESCO was very surprised that several parties, notably DRA and TURN, who are generally vocal proponents of ensuring very rigorous cost/benefit analyses of each discrete

program, did not address some glaring issues in the proposed program redesigns. This silence begs the question of whether parties and the Commission are willing to allow a substantial part of the program portfolio (*e.g.*, \$150 million lighting program with an undefined technology mix) to operate under different ground rules for program goals, cost/benefit and program management incentives. Given the contentious nature of this issue in this and related proceedings on the subjects of whether the utilities achieved their past portfolio energy savings goals for programs that were well defined, it seems unwise to proceed to redesign and launch programs for which ED states in advance that it cannot specify technology mixes, much less project energy savings. NAESCO believes that it would be unproductive for the Commission to order the utilities to implement such programs, and then subject these programs at some time in the future to a to-be-developed structure of goals, cost/benefit analyses and management incentives. Therefore, NAESCO recommends that the Commission either suspend the implementation of program redesigns until these other portfolio design elements are approved, or explicitly exempt these redesigned programs from some or all aspects of the current portfolio management regimen.

Administrative Law Judge Should Clarify Program Continuation

NAESCO supports the comments of numerous parties who stated that they assume that programs that are not mentioned in the Energy Division's Attachment A to the Administrative Law Judge's (ALJ) Ruling will continue, with normal management adjustments by the utility Program Administrators, through the Bridge Period. We urge the ALJ to clarify this point with a subsequent Ruling, and to urge the utilities to begin the preparation of the continuation plans for these programs immediately, so that the planning of the entire portfolio is not held up by the restructuring of a few programs. There is precedent for such a parallel path in earlier ALJ Rulings and Commission Decisions in this case.

ALJ Should Define the Scope and Schedule for Program Development

After the ALJ has clarified which programs will continue through the Bridge Period, he should define the scope of the program development to be undertaken and the required schedule for this development work. NAESCO urges that the default be that program redesign must be completed by about April 1, as recommended by the Sempra Energy Utilities, and that programs for which the redesign is not complete continue as currently designed during the Bridge Period. NAESCO believes that a firm deadline will force the parties to come to a timely agreement on

program redesign, rather than have another set of issues in this proceeding that drags on unresolved.

NAESCO Strongly Supports a Collaborative Approach

NAESCO strongly supports the collaborative approach to the redesign of programs targeted by the Energy Division, as proposed by NRDC (NRDC at 2-5). NAESCO has participated in such collaboratives in other states that were successful in redesigning programs in situations where the redesign was very contentious. An interesting precedent may be the collaborative that was convened in New York City several years ago to address the redesign of the Targeted DSM Program administered by ConEdison. That collaborative was actually facilitated by the ALJ, who had been directed by the New York Public Service Commission to deliver a result that represented a near consensus on program design (if a 100% consensus was not possible) on a tight time schedule. The collaborative successfully dealt with a series of very difficult technical, economic and contractual issues.

A New Approach to Acquiring EE Resources is Required

Numerous parties in their comments suggested that a new approach to project finance achieving is required if California is to reach its goal of the acquisition of all cost-effective energy efficiency. TURN, for example, suggested that a Standard Offer type of program be adopted, in which ESCOs implement EE improvements with private capital and are repaid over time from energy savings. NAESCO, whose members have implemented such programs in other states quite successfully, suggests that the current rules under which California's programs operate hamstring its ability to implement such programs.

Given the failure of the state legislature to extend Public Goods Charge (PGC) funding last year, the Commission is currently switching the funding for EE programs from a mix of PGC and procurement sources to 100% procurement sources. NAESCO suggests that this switch should simplify the acquisition of EE resources. If the state's goal is to acquire all cost-effective energy EE, then it should acquire all EE that is cheaper than generation resources. Not just EE resources that are, for example, above Title 24 standards, but all EE resources. And the Commission must be willing to allow (or order) the utilities to contract for EE resources on the same basis that they contract for generation resources – long-term contracts with assured pricing levels.

For example, the Energy Upgrade California (EUC) rules that restrict the utilities' ability to purchase all available EE resources from a homeowner undermine the program through rules that ensure, in effect, the program cannot attain its goals. NAESCO urges the Commission and the parties to imagine if the same standard were applied to the purchase of commodity energy supply. How many generators would be willing to supply kWh to the utility if the utility were only to make a one-time payment that represented a fraction of the value of the delivered kWh and asked the generator to assume that it would recover the balance of its unamortized capital investment from a future purchaser of the generating asset? So we should not be surprised that very few homeowners are willing to invest in "deep retrofit" improvements (which should include rebuilding the thermal shell in addition to lighting and HVAC upgrades) knowing that the value of those investments cannot be reclaimed in energy savings during the ownership period nor is there a realistic (documented) prospect of recovering the unamortized cost of the improvements in increased resale value. Supplying low-cost or even no-cost financing does not solve the problem that the EUC program is asking the homeowner to put substantial capital at risk in a bet that the market valuation of EE improvements will be transformed in the near future.

NAESCO further suggests that the current program rules are financially penalizing ratepayers every day by requiring utilities to buy supply resources from generators when there are less expensive EE resources available, and that the acquisition of these resources can put tens of thousands of Californians to work and provide an economic development boost to every community in the state. If the Commission and parties want the market to work, then they have to listen to the market. The owners of the EE resources (including most of the readers of these comments) are not selling at the currently offered prices, in California or anywhere else in the country. So we have to raise the prices offered by the programs to the point at which the EE resource owners are willing to sell, not spend fruitless years arguing in one proceeding after another about arcane calculations of what prices we think the owners "should" accept.

If EUC offered homeowners the full value of the all delivered EE resources, delivered in bill reductions or a check every month, NAESCO believes the program would have to fight off customers, rather than the current situation of trying to conjure reasons why customers should invest in what is not a good deal for them.

Respectfully submitted by:

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

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