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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Concerning Energy Efficiency Rolling Portfolios, Policies, Programs, Evaluation, and Related Issues.	**Rulemaking 13-11-005 (Filed November 14, 2013)**

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF ENERGY SERVICE COMPANIES ON THE RULING OF ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE SEEKING INPUT ON APPROACHES FOR STATEWIDE AND THIRD-PARTY PROGRAMS

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NAESCO is pleased to offer reply comments to the comments made in response to the May 24, 2016 Ruling of Commissioner Peterman and Administrative Law Judge Fitch, one of the most thoughtful and innovative energy efficiency rulings in California in at least the past 10 years.

Summary of NAESCO Response

In our opening comments, NAESCO supported (1) a "bright line" between the administration and the implementation of energy efficiency (EE) programs, (2) use of third parties for program implementation, and (3) reinstitution of Standard Performance Contracting (SPC) Programs, which have been successfully implemented in California in the past and are now being successfully implemented across the country. We believe that SPC programs can satisfy many of the concerns that the multiple parties expressed in their Opening Comments on this Ruling.

Discussion

1. Statewide Performance Contracting (SPC) Programs Address Some Parties' Key Concerns

The Ruling addressed implementation in upstream, midstream and downstream EE programs. The Program Administrators (PAs) concede that at least some upstream and midstream programs should be implemented statewide by third parties in 2017. However, PG&E argues that IOUs should retain roles as administrators of downstream programs (PG&E Opening comments, pp. 3, 7). PG&E (PG&E Opening Comments, pg. 28), SCE (SCE Opening Comments, pp. 7, 13, 15, 21) and SDG&E (SDG&E Opening Comments, p. 4) state that they should be allowed to design programs for local needs, as an argument against statewide programs. SCE (SCE Opening Comments, p. 7) and the California Energy Efficiency Industry Council (CEEIC) (CEEIC Opening Comments, pp. 3, 4) describe the need for having a number of implementers of programs, as opposed to having one statewide implementer of a program. The IOUs (PG&E Opening comments, pp. 4, 5; SCE Opening Comments, pp. 4, 6) and CEEIC (CEEIC Opening Comments, pp. 3, 6) warn against the impact of market "disruptions" resulting from implementing some of the changes proposed in the Ruling.

The Performance Contracting Mechanism proposed by NAESCO in our opening comments, properly implemented, addresses all these concerns, while achieving two of the Ruling's chief objectives: (1) statewide programs, and (2) competitively determined third party implementation.

(1) **PA administration within its service territory for a downstream program**. In the early 2000s, the California IOUs implemented a truly statewide SPC program while using local PAs. Program rules, incentives, and even applications were uniform across service territories. The only exception was that applications had the logo of the host PA in whose service territory a program was implemented. Achieving this level of uniformity across PAs will require a much great degree of inter-IOU coordination than has been demonstrated in recent years, but with Commission direction, statewide SPC programs are attainable, and, in this case, the host PA retains administration for a "customer facing" program.

(2) **Flexibility to meet local needs.** NAESCO agrees that there may indeed be local

conditions, like distribution constraints, with accompanying higher costs, that cannot be adequately addressed by a purely uniform statewide approach. The PAs have made some progress in recent years in identifying and addressing local constraints with demand side solutions. We believe that these local needs can be easily addressed *within* a statewide SPC program. If a PA identifies a constrained, higher cost locale, it can focus implementers of statewide SPC programs on these needs locally and cost effectively by (1) spending more on marketing their services in those areas; (2) providing higher program incentives to customers, as a function of higher local costs; (3) providing higher incentives to customers based on target levels of project savings (*e.g.*, one incentive level for 20% savings, and a higher incentive for 30% savings); and/or, (4) providing higher incentives for target technologies (e.g., on-peak cooling in large commercial buildings). The PAs have a history of directing implementers in this way, such as the limited-time Summer Lighting Program that SCE ran in 2006.

(3) **Multiple, competitive implementers**. The ESCO industry has successfully achieved almost $50 billion dollars of cost effective savings over two decades, implemented by a diverse group of Energy Service Companies (ESCOs). These providers (19 are currently pre-qualified by the California Department of General Services) have competed and will continue to compete to provide services in California at a Commission-approved standard offer price.

(4) **No Disruption**. As described in (3), with many experienced, sophisticated firms already active in California, and already using pay for performance (P4P) implementation models and the IPMVP Option C M&V protocols that conform to the requirements of AB 802 (existing conditions baselines and metering-based savings), the Commission can expect a robust response to an SPC program from day 1.

2. SPC Program Implementation Should Begin Immediately

The Commission should order the IOUs to implement a statewide SPC program for the Municipal, University, Schools and Hospital (MUSH) and industrial markets beginning, at the latest, in January 2017. ESCOs have been implementing projects in these markets for over 20 years. Project development and implementation are well established, as are Measurement and

Valuation protocols, and an SPC program for these markets can begin without delay. The IOUs will need to begin working together immediately to reinstitute uniform statewide policies, procedures, processes and applications.

The Commission should order the IOUs to implement a Standard Performance Contract for the residential and small commercial as soon as possible. The PAs should begin work on protocols for pay for performance and M&V for these markets immediately, in order for these protocols to be ready at the earliest possible start date.

Finally, in its Opening Comments, NAESCO suggested that it makes sense for PAs to select one implementer or a small set of implementers for programs to serve some market segments (NAESCO at 10-11). Based on questions from other parties, NAESCO wants to clarify and amplify this response. We suggest that any PA analysis to restrict the competition between implementers, and the decision of the IE to accept the PA recommendation, be transparent and published for comment by all stakeholders. We further suggest that the basis of the PA analysis should be such factors as:

- The ability of an individual $500-$1,000 residential retrofits to absorb the costs of competitive marketing; and,
- The ability of potential implementers to present distinctive offerings (*e.g*., a $500 retrofit package using DEER values to calculate savings *vs*. a more comprehensive $1,000 retrofit package using more intrusive metering-based M&V).

3. **NAESCO Supports Cal UCONS' Observations about Important Additional Values of Performance Contracting**

We note that Cal UCONS (Cal UCONS Opening Comments at pp. 3 - 5) has endorsed Performance Contracting for specific program areas and applications. We agree with Cal UCONS that one of the benefits of Performance Contracting is that it can mitigate the effects of the slow process of workpaper approval to get new and innovative measures into DEER, and thus overcome one of barriers to achieving the Ruling's goals. Measuring savings from existing conditions baselines using metering data, either in individual large projects (using IPMVP Option C in the MUSH and industrial markets) or an aggregation or sampling of small projects (using procedures validated in other jurisdictions for residential and small C/I markets), obviates the need for most workpapers. NAESCO also agrees with Cal UCONS that for a transition period, DEER established savings should continue to be used for many residential and small commercial applications, where DEER savings are found to be adequate and cost effective. Additionally, to reduce the burden of new program development on the ED, we suggest that the Commission should use the CalTF to develop the residential and small C/I market sector rules to establish when the DEER values are adequate and when the IPMVP should be used.

4. NAESCO Supports ORA's Proposal for Independent Evaluators with One Clarification

In its opening comments (pp. 1, 5), ORA proposes that the Commission utilize Independent Evaluators (IEs) to review the IOUs' bidding processes and results. IEs have been used successfully in reviewing supply side solicitations for many years. NAESCO agrees that this is a necessary element of implementation of a competitively procured, third party implemented portfolio, and a very modest investment to provide quality assurance for expenditures of hundreds of millions of ratepayer dollars. NAESCO would like the Commission to clarify that IEs be under contract to the Commission and report to the Energy Division to ensure all parties of the IEs' independence.

5. NAESCO Supports ORA's Proposal for PA Implementation with One Clarification

In its opening comments (pg. 15) ORA states that the Commission should "allow in house implementation by a PA if the PA bids its own program into a competitive solicitation and commits to a pay-for-performance arrangement that ties PA compensation to specific performance criteria at a lower price than offered by any bidder in the market." NAESCO does not agree that a PA should be able to bid into a competitive solicitation because bidding is not a proper function for a PA. Also, if the competitive solicitation is managed by the PA, the PA has a conflict of interest in evaluating solicitations in which it is one of the bidders. NAESCO does agree that if a PA runs a competitive solicitation, reviewed by an IE, and does not receive any qualified bids at an acceptable price, the PA may apply to the Commission to implement the program via advice letter, provided that it operate the program under the same pay-for-performance terms that it pays non-PA implementers.

6. The California Energy Efficiency Coordinating Committee Is Not a Decision-Making Body

In their opening comments, a number of parties refer issue resolution and proposal development to the California Energy Efficiency Coordinating Council (CAEECC). (PG&E Opening comments, pp. 10, 13, 31, 34; SCE Opening Comments, p. 24; CEEIC Opening Comments, pp. 2, 12, 14,16, 17, 22, 23, 24; NRDC Opening Comments, pp. 4, 6, 14, 16). While stakeholder processes can help parties collectively develop ideas and discuss issues, the CAEECC is an amorphous process with no authority or decision-making ability, and does not even assure parties that issues will be discussed. For example, almost three months ago the Coalition for Energy Efficiency made a substantive proposal on the next energy efficiency portfolio, and there has been no response at the CAEECC from the PAs. In its opening comments (pg. 15), PG&E asks the Commission for authorization to issue new energy efficiency contracts in 2016. These will surely affect the new portfolio, but PG&E does not indicate that it plans to discuss these at the CAEECC. Finally, the PAs are not bound to follow any suggestions coming from participants at the CAEECC and effectively have veto power, because the operating rules of the CAEECC define "consensus" on an issue not as the overwhelming majority of the members, but as unanimous agreement of the members.

If the Commission wants to rely on the CAEECC to resolve contentious issues, NAESCO offers its experience in New York as an example of how that might work. In 2005, Consolidated Edison (ConEd) began its targeted DSM program, which sought to defer or cancel system T&D upgrades in load-stressed distribution substations. At issue were the rules of the bid solicitations and the contracts ConEd offered to implementers. ConEd had its way of doing things, which the program implementers and other stakeholders felt placed unnecessarily onerous burdens on the implementers. The Commission appointed a collaborative, which was managed by the assigned ALJ for the proceeding, who told the collaborative that his charge from the Commission was to get consensus within a short time frame, and that he would keep the collaborative in session until consensus was reached. The collaborative reached compromises on very difficult issues, and developed a new set of bidding and contract procedures on schedule, which has successfully delivered several hundred megawatts of EE in 15-20 substation areas, resulting in the deferral or cancellation of several billion dollars' worth of system upgrades. So it is possible for the Commission to institute an effective collaborative process, if it is willing to manage that process aggressively.

Conclusion

NAESCO appreciates the opportunity to submit these Reply Comments, and urges the Commission to:

1) order the immediate launch of statewide SPC programs, recognizing that SPC programs can help the Commission meet both its goals and the legislature's mandates while satisfying the expressed concerns of the PAs about local marketing and targeting.

2) accept ORA's proposal for Independent Evaluators and PA Implementation, with modifications that the IEs should report to the Commission and the PAs be allowed to implement programs only after demonstrating that a solicitation for third implementers produced no acceptable bidders, and that they be subject to pay-for-performance payment terms.

3) recognize that the CAEECC, as currently constituted, is not capable of resolving contentious issues, and that there are more efficacious alternative structures for a CAEECC that can use the capabilities of all interested parties to resolve these issues.

Respectfully submitted by,

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