NCLC/CHPC/NHLP Key Points for
Meeting with California Public Utilities Commission Energy Division Staff
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<u>The PD did not reach any decision regarding Expedited Multifamily Enrollment</u>

NCLC et al. filed extensive evidence about the benefits of Expedited Multifamily enrollment. The essence of expedited enrollment is allowing an energy efficiency program – like ESAP – to rely on income certification done by the Department of Housing and Urban Development (HUD), thus minimizing the administrative time and expense spent on certifying individual households.

1. We offered Testimony of Wayne Waite, Manager for Field Energy and Climate Operations for the Department of Housing and Urban Development (November 18, 2011 NCLC/CHPC/NHLP Testimony filing, Attachment D, pp. WW B-1 to -11).

Mr. Waite has had extensive experience working with state and local agencies, utility companies, the California Energy Commission, and the CPUC on a range of energy efficiency issues. (See p. WW B-3 for his experience).

Mr. Waite reviewed the experience HUD had in launching expedited enrollment with the state's weatherization agency, CSD, and explained how expedited enrollment can avoid the time and expense of going door-to-door to enroll households individually while also facilitating a "whole building" approach to energy efficiency. He noted how pleased HUD, CSD and other weatherization agencies were with the results. He recommended that the Commission consider a similar expedited enrollment protocol for ESAP. (p. WW B-3 & B-4).

Mr. Waite then detailed the discussions between HUD and the federal Department of Energy (DOE) that led to the signing of a Memorandum of Understanding that allows for expedited enrollment. DOE determined that HUD's rules for determining household income include "sufficiently robust" procedures so that DOE could rely on HUD's income calculations without having to replicate them. (p. WW B-4 & B-5).

Mr. Waite also detailed the advantages of allowing expedited enrollment and noted that the vast majority (perhaps 90%) of HUD tenants have incomes so low that they would likely prove ESAP-eligible if expedited enrollment were allowed, but without incurring the normal administrative cost of household-by-household certification. (p. WW B-6).

Mr. Waite offered that if the Commission allowed expedited enrollment, his agency would generate a list of buildings in which 80% of the tenants have incomes at or below 200% of the federal poverty guideline, which aligns with ESAP's own requirements. (p. WW B-11).

2. We offered the Testimony of Dan Levine, Senior Vice President for Construction for the John Stewart Company (November 18, 2011 NCLC/CHPC/NHLP Testimony filing, Attachment B, pp. DL-4, -5, -7 to -9). Mr. Levine has served as Architect or Construction Manager for over 200 alterations of existing multifamily properties and manages property maintenance services at over 350 multifamily properties (p. DL-2).

Mr. Levine noted the difficulties that multifamily rental properties currently have in accessing ESAP, and recommended an expedited enrollment process that, if adopted, would

"minimize disturbance to tenants, increase participation, reduce duplication of efforts and help ease the process of enrolling into the program." (p. DL-5).

Mr. Levine elaborated on this point, adding that ESAP requires "each of our tenants to prove they are income-eligible" and offering that where building owners already have to verify the income of tenants, it is duplicative and unnecessary to require individual tenants to again certify their income for ESAP. (p. DL-7). He concluded by recommending that "expedited enrollment should use existing data collection efforts, like those required by HUD." (p. DL-9).

3. We thoroughly briefed the issue in our February 2, 2012 Initial Brief, pp. 17-25.

We offered that the model developed by HUD, DOE and CSD could be used by ESAP, and that HUD could develop a list of buildings in which it would verify that at least 80% of the tenants had incomes at or below 200% of the federal poverty guideline. In addition to citing the testimony of Wayne Waite and Dan Levine, summarized above, we cited a relevant report by the Multifamily Subcommittee of the California Home energy Retrofit Coordinating Committee; federal regulations regarding the delivery of weatherization services to multifamily buildings; and rules of the state's Multifamily Affordable Solar Housing (MASH) and California Solar Initiative programs that already allow for building-level enrollment.

We also noted that several parties joined NCLC et al. in urging adoption of expedited enrollment: Green for All, Center for Accessible Technology, National Asian American Coalition, Latino Business Chamber of Greater Los Angeles, and the Black Economic Council.

4. We addressed expedited enrollment in our February 16, 2012 Reply Brief pp. 4-6.

5. The Proposed Decision references that NCLC et al. and other parties have raised the issue of expedited on pp. 117 (". . . an expedited enrollment process for multifamily properties . . ."), 124, and 126.

The PD encourages "leveraging opportunities" with other programs such as WAP with the objectives of achieving "new customer enrollments" and "reduc[ing] program costs, p. 36. The PD notes that the "most obvious leveraging opportunities" include LIHEAP and the WAP, as administered by CSD. p. 38

6. The expedited enrollment proposal offered by NCLC et al. is supported by expert testimony of HUD (Wayne Waite), and an experienced multifamily property manager (Dan Levine); the issues have been briefed by NCLC et al. (initial and reply briefs); and the proposal addresses "leveraging" between WAP and ESAP that could lead to "new customer enrollments" and "reduced program costs." However, the PD makes no ruling whatsoever regarding expedited enrollment.

<u>The PD did not reach any decision regarding counting "Housing Subsidies" as income</u>

NCLC et al. filed extensive evidence about removing "housing subsidies" as an item counted as income and to conform ESAP's income definition to that of HUD as a way to increase administrative efficiencies.

1. We offered the Testimony of Wayne Waite, Manager for Field Energy and Climate Operations for the Department of Housing and Urban Development (November 18, 2011 NCLC/CHPC/NHLP Testimony Filing, Attachment C, pp. WW A-1 to A–6).

Mr. Waite has extensive knowledge of HUD's housing programs. (See p. WW A-2 for his experience).

Mr. Waite reviewed the various federal housing subsidy programs, including public housing, project-based Section 8, tenant-based vouchers, and the Low Income Tax Credit Programs. He emphasized that HUD provides no direct assistance to tenants in any of its housing programs (p. WW A-3 - A-5).

Mr. Waite testified that tenants often have no knowledge of the amount of subsidy attributable to his or her unit. As a result, in his view it would be problematic for IOUs to document the value of subsidies provided under HUD programs (p. WW A-5).

Mr. Waite added that if the IOUs and tenants are required to document and place a value on housing subsidies, many tenants in federally-subsidized housing would simply be unable to do provide the necessary documentation and would as a result be excluded from ESAP/CARE. In his opinion, a policy that counts housing subsidies as income could exclude a large number of federally-subsidized tenants, many of whom with extremely low incomes, from accessing the Commission's programs (p. WW A-5 & A-6).

2. We thoroughly briefed the issue in February 2, 2012 Initial Brief, pp. 8-15.

We demonstrated that it is impossible for tenants or owners to quantify the value of certain types of housing subsidy, and, therefore, that requiring housing subsidy to be counted as income presents insurmountable barriers for otherwise income-eligible ESAP households.

We also noted that several parties joined NCLC et al. in urging exclusion of housing subsidies from the definition of income: Division of Ratepayer Advocates, Green for All, Center for Accessible Technology, Natural Resources Defense Council, and the Utility Reform Network.

3. We addressed the Commission's definition of income in our February 16, 2012 Reply Brief pp. 5-6.

4. The Proposed Decision references that NCLC et al. and other parties have raised the issue of counting housing subsidy on pp. 117 ("... remove 'housing subsidies' as an income source in regards to program enrollment ..."), 122, and 126.

5. The proposal to remove housing subsidies from the definition of income is supported by expert testimony of HUD (Wayne Waite), and the issues have been briefed by NCLC et al. (initial and reply briefs). However, the PD makes no ruling whatsoever regarding housing subsidies.

<u>The Commission should reconsider lifting the absolute prohibition on ESAP assisting with energy efficiency measures for owner-paid heating and hot water systems</u>

NCLC et al. extensively briefed the legal question of whether Civil Code 1941.1 and the *Green* decision should compel the Commission to deny ESAP assistance for owner-paid heating and hot water systems in multifamily rental housing. February 2, 2012 Initial Brief, pp. 36-43.

We stressed that nothing in the Civil Code requires an owner to install equipment of any particular efficiency level nor to replace inefficient equipment so long as it is operable. We also noted that the current prohibition can be read to bar relatively inexpensive measures with relatively large energy savings. We also noted that many states which are seen as leaders in energy efficiency have laws similar to Civil Code 1941.1 yet allow incentives for heating and hot water equipment in rental properties. The *Green* decision quite clearly stated that the warranty of habitability "does not require that a landlord ensure that leased premises are in perfect, aesthetically pleasing condition, but it does mean that 'bare living requirements' must be maintained."

The PD does not address these legal arguments. It simply cites the prior ESAP decision and the *Green* case in a footnote. (See PD, p. 86 & n. 52).

<u>Rather than rejecting multifamily rental heating and hot water as eligible measures due to concerns about cost, the Commission should consider way to make these measures eligible while containing costs.</u>

The PD criticized NCLC et al.'s recommendations regarding multifamily rental heating and hot water systems based on the potential costs. While NCLC et al. proposed various ways to contain the cost of making multifamily rental heating and hot water systems eligible measures, the PD made no reference to these ideas to contain costs.

1. NCLC et al. have been mindful about the potential cost of making multifamily rental heating and hot water eligible measures. In response to ALJ Kim's December 28, 2011 Ruling Seeking Comments, we stated we are "mindful of the fact that changes which could make it easier for multifamily tenants and owners to access ESAP should not result in what some might consider disproportionate spending in this sector." (January 13, 2012 Response to ALJ Kim's Ruling Seeking Comment, p. 5).

2. We thoroughly stated our position in our February 2, 2012 Initial [Opening] Brief that we do not propose ESAP provide assistance in all multifamily rental buildings nor that the ESAP assist with the full cost of the measures.
   - "We are not suggesting that these [multifamily rental heating and hot water] measures should be prescriptive measures that are always allowed, nor are we asking that these measures be provided for free." (p. 37)
   - "[W]e are proposing that such investments be partially supported by ratepayers only when an investment-grade audit demonstrates that the investment will be cost-effective, building-by-building." (p. 40) and

- "[W]e are not proposing that such measures should be provided at no cost to owners…." (p. 44).

3. NCLC et al. have offered ways to contain the cost of these measures.

In our December 9, 2011 Reply Testimony, Matt Schwartz suggested containing costs by recommending, "that ESAP funds be available to pay not for the replacement cost but for the incremental cost of upgrading domestic hot water, heating, cooling and building envelope systems from the minimum efficiency allowed by law to the point where these building upgrades would be adequate to achieve a minimum 20% overall reduction in energy usage." (p. MS-10).

In our January 13, 2012 Response to ALJ Kim's Ruling Seeking Comment, we suggested the possibility of a cap on spending for these new measures. "[E]ach [IOU's] ESAP plan may need to have a cap on spending in this building sector. NCLC/CHPC/NHLP are not averse to consideration of a fair and equitable cap." (p. 5)

In our February 2, 2012 Initial [Opening] Brief, we offered a more detailed approach to limiting ESAP assistance to no more than $100 per unit for building-specific whole-building energy audits and $1,000 per unit for owner-metered measures that are cost-effective as determined by a building-specific audit and that help the specific building meet or exceed a minimum energy savings target. (p. 45)

In addition, we reiterated the idea of a program-wide cap in our February 2, 2012 Initial [Opening] Brief, "NCLC/CHPC/NHLP believe it would be appropriate to adopt a program-level annual spending cap on the $100 per unit/$1000 per unit incentives just proposed, with such a cap bearing a fair and reasonable relationship to the number of income-eligible multifamily units as a percentage of all income-eligible ESAP households."

4. If the Commission applied a mechanism to contain cost of multifamily rental heating and hot water systems, the fiscal impact of such measures would be less than the PD's projected $41.6 million.

Referencing IOU evidence, the PD notes that, "providing these central measures (e.g. repair or replace functioning furnaces and water heaters) at no-cost to multifamily units would cost an additional $41.6 million over the 2012-2014 program cycle." (p. 85) However, if ideas (notably a program cap) referenced above were applied, costs could be well less than $41 million.

The PD also notes that the $41.6 million cost, "represents a 31% budget increase from the currently proposed HVAC Domestic Hot Water budget (from $134 million to $175 million over the 2012-2014 program years)." Yet, the $41.6 million would be only four percent of total planned expenditures—less than the amount PG&E will spend on appliances ($98 million), lighting ($83 million) and in-home education ($44 million). In addition, in any given year IOUs often underspend portions of their ESAP budgets, sometimes significantly. Thus, while allowing NCLC's request has cost implications, the Commission could manage those costs so as to avoid any program disruptions.

The PD inaccurately cites NCLC et al.'s recommendations. The Commission should acknowledge NCLC et al.'s legal arguments, our extensive comments on cost and lift the absolute prohibition on making heating and hot water systems eligible for ESAP assistance.