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California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Written Response to June 25, 2012 All-Party Meeting for 2012-2014 ESAP CARE Proposed Decision in A.11-05-017 et al.

Dear Commissioners:

In accord with the invitation for written responses to the June 25, 2012 All-Party Meeting for the 2012-2014 ESAP CARE Proposed Decision, the below-signed parties representing low income communities, consumer advocates, and affordable housing, jointly submit the following comments on the ESAP Questions posed in the All-Party Meeting Agenda.

WATER HEATERS AND FURNACES IN TENANT-OCCUPIED BUILDINGS

We urge the Commission to remove the prohibition on ESA funding for water heaters and furnaces in tenant occupied buildings. Several parties have urged the Commission to remove the prohibition on ESA funding for furnace and water heater repair/replacements in rental housing. In opening comments on the Proposed Decision (PD), the National Consumer Law Center (NCLC), the Natural Resources Defense Council (NRDC), and other parties well detail the error of the PD in continuing to misinterpret Civil Code Section 1941.1 as a legal barrier to offering ESAP assistance for furnace and water heater repair/replacements in rental housing.[1]

We recommend the Utilities be ordered to confer with interested parties and Energy Division staff and to file, no later than three months after the final decision, Tier 2 advice letters addressing:

- Funding these measures, and establishing a cost cap, if such a cap is seen as necessary
- Determining a reasonable cost-share for building owners
- Ensuring that the benefits flow to tenants, and
- Other relevant issues necessary for delivery of heating and hot water measures in tenant occupied buildings.

Several parties have recommended various ways to contain and share costs. In testimony, briefs and other filings, parties have suggested reasonable cost-share arrangements and ways to ensure that tenants benefit.[2] Regarding tenant benefits, NCLC/CHPC/NHLP have not only highlighted the Commission's own efforts to address tenant benefits,[3] but have also offered an approach even more cautious than that adopted by the Commission in the Solar Hot Water (R.10-05-004) proceeding.[4] In

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[1] *See* NCLC Opening Brief, pp. 6-10 ("The Prior Commission Ruling Prohibiting Heating and Hot Water System Repair and Replacement in Rental Housing is Legally Erroneous and Should be Reversed"); DRA Opening Brief, p. 58 ("ESAP Should Replace the Current Blanket Prohibition Against Providing Heating and Hot Water Appliance Installations in Multi-Family Dwellings With Appropriate Criteria Applicable to These Installations") & p. 59 ("DRA supports NRDC's analysis"); NRDC Opening Brief pp. 12-14 ("The Commission Should Remove the Prohibition on Using ESA Program Funds to Improve the Efficiency of Heating and Hot Water Systems in Rental Housing").

[2] *See as examples* CHPC/NHLP Opening Comments, pp. 5-7; NCLC/CHPC/NHLP Initial [Opening] Brief, pp. 45-46.

[3] *See* NCLC/CHPC/NHLP Initial [Opening] Brief, pp. 41-42 citing D.11-10-015, pp. 13-14.

[4] NCLC/CHPC/NHLP Initial [Opening] Brief, pp. 42-43.

addition, NCLC/CHPC/NHLP have stated we are not opposed to a cost cap.[5] We welcome the opportunity to work with other parties under a mandate from the Commission that Tier 2 Advice Letters should be filed within three months of a final decision in this proceeding.

MULTI-FAMILY ISSUES

The Commission should adopt an expedited enrollment process for multifamily buildings using income data from HUD. NCLC/CHPC/NHLP have urged the Commission to "adopt an expedited multifamily enrollment process using a list of buildings tailored to meet ESAP's 80 percent threshold requirement (so-called "80/20 rule") based on the list developed by the U.S. Department of Energy (DOE), HUD, and CSD for the Weatherization Assistance Program (WAP). Relying upon HUD's rigorous income certification process, the list would include buildings with at least 80 percent of units with household incomes at or below 200 percent of the federal poverty level."[6]

Modeled after the California Department of Community Services and Development's (CSD) Weatherization Assistance Program enrollment process, such a list would increase administrative efficiency and help address the large number of "unwilling" and "unable" households that may income qualify for the program.[7]

The Commission should not count housing subsidies as income. Housing subsidies should not be counted, primarily because 1) the value of the subsidy cannot be determined for tenants in public housing, projects financed with Low Income Housing Tax Credits (LIHTC), and those using project-based Section 8, and 2) these housing subsidies are not in the form of cash. There is no record evidence that these housing subsidies can be counted. Moreover, there is credible evidence that they cannot.

Outside of utility programs in California, no other income-tested program that NCLC/CHPC/NHLP could find counts housing subsidies. In addition, ESAP does not count other common non-cash sources such as free medical assistance (e.g., MediCal); housing provided by family or friends for free or at great discount; mortgage interest deductions; nor CARE assistance.

The below-signed parties respectfully submit these comments in advance of the June 25, 2012 All-Party Meeting and look forward to discussing these issues with the Commission, staff and other parties.

Sincerely,

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[5] *See* CHPC/NHLP Opening Comments, pp. 6-7.

[6] NCLC/CHPC/NHLP Initial [Opening] Brief, p. 17.

[7] *See* NCLC/CHPC/NHLP Reply Brief, pp. 4-5, 6.