

**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
ADMINISTRATIVE LAW JUDGE'S PROPOSED DECISION
ON PHASE IIA ISSUES**

September 15, 2015

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The National Association of Energy Service Companies (NAESCO) appreciates the opportunity to submit these reply comments to the comments of other parties on Administrative Law Judge Edmister’s August 18, 2015 Proposed Decision (PD).

Summary of NAESCO Reply Comments

NAESCO appreciates the work that ALJ Edmister has done to organize a tremendous amount of information in this proceeding into clear summaries of the issues and their proposed resolution. NAESCO urges the ALJ and the Commission to continue this work by accepting the comments of multiple parties on several key issues and modifying the Proposed Decision, as follows.

1) NAESCO supports the comments of multiple parties that the PD’s instructions to the Program Administrators (PAs) about third party programs should be clarified to facilitate the PAs launching innovative third party programs in 2016.

2) NAESCO supports the comments of multiple parties that the PD’s timing of DEER updates should be clarified and streamlined.

3) NAESCO supports the comments of several parties that the process for establishing *ex ante* values, particularly as regards custom projects, has not been fixed.

Discussion

NAESCO offers the following in support of its comments.

1) NAESCO supports the comments of multiple parties that the PD’s instructions to the Program Administrators (PAs) about third party programs should be clarified to facilitate the PAs launching innovative third party programs in 2016.

NAESCO has observed in previous comments that the PAs have initiated few new third party (3P) programs over the past few years, even though program innovation has been Commission policy for more than a decade. While the IDEAA process may be successful in

surfacing proposals for innovative programs, its negligible funding levels have meant that essentially no new 3P programs have been launched. Multiple parties, including UCONS, NEST Labs, CEEIC, NRDC and ORA commented that the PD's instructions that the PAs extend existing 3P contracts for up to three years does not address the lack of innovative programs. NAESCO appreciates the ALJ's desire to not put the cart before the horse in this proceeding, and to defer the launch of re-bid 3P programs until after Phase III is concluded. But given the fact that the proceeding is taking longer than originally anticipated, NAESCO thinks it is reasonable for the Commission to open up a good portion of the 3P portfolio to re-bid and innovative programs now, rather than wait for another two years.

2) NAESCO supports the comments of multiple parties that the PD's timing of DEER updates should be clarified and streamlined.

Multiple parties, including NEST, EnerNOC, CEEIC, NRDC, PG&E, SCE and SDG&E/SoCal Gas commented that the PD's instructions about freezing DEER and other *ex ante* updates between "bus stops" are confusing, and urge the Commission to clarify and streamline the update schedule to facilitate the Rolling Portfolio annual program planning process. NAESCO observes that the timetable for incorporating changes in DEER, which in turn is informed by the results of EM&V studies, is falling further and further behind the marketplace.

For example, NAESCO members include major international manufacturers and distributors of lighting products such as Philips and Osram Sylvania, and they have told NAESCO that the pace of innovation in lighting has already accelerated to the point that they no longer equip their sales reps with printed product "cut sheets" because the cut sheets are often obsolete in the few weeks it takes to distribute them through the sales organization. So an *ex ante* update process that takes 2-3 years to deliver results is not only not keeping up with the marketplace, but is in danger of falling behind the Title 24 update schedule, which means that updates are almost by definition not going to be very useful.

Another example is provided by the comments of EnerNOC and NEST Labs, who observed that the *ex ante* update process is too slow. NEST finds itself arguing, unsuccessfully so far, that its Smart Communicating Thermostats (SCTs) are a different measure from programmable clock thermostats, which is like Apple having to argue that the iPhone 6 is a different device than an early 1990s pushbutton phone, which is the same generation of

technology as the clock thermostats. EnerNOC, which is using information services to integrate Demand Response (DR) with energy efficiency on a significant scale, and thus fulfill one of the Commission's long-term policy goals, is mired in a DEER update process which apparently cannot deal with either its technology or the rate at which the technology can be modified (because it is software-based) to meet market needs.

So we urge the Commission to recognize that if it wants to have new technologies as part of its EE portfolio it should establish a new, much faster process for establishing *ex ante* values, staffed by people who are experts in the EE technologies that are evolving rapidly.

3) NAESCO supports the comments of several parties that the process for establishing *ex ante* values, particularly as regards custom projects, has not been fixed.

NAESCO supports the comments of several parties, including CEEIC, NRDC, and SoCal Gas/SDG&E that the frustration of the ALJ and the ED with the continuing implementer and PA complaints about the custom project *ex ante* process (PD at 84-86) is misplaced. There have been some improvements, but the complaints are not a “red herring.” The process is not fixed to the point that it can process the volume of projects required to meet the state's ambitious EE goals. There is a continuing lack of transparency in the ED reviews, because the ED insists on only dealing with the PAs, not with the implementers or the customers. There is also no dispute resolution process, which might alleviate some of the problems, if the implementers and customers could talk to the ED directly about the project. The root of the problem seems to be that the ED thinks that “industry standard practice” is something different than actual industry practice (e.g., re-winding a motor several times after the end of its expected useful life rather than replacing it with a high efficiency motor), which leads the ED to disallow incentives and leads to substantial lost opportunities in the industrial sector.

NAESCO also supports the CEEIC and other parties in urging the Commission to reverse the PD's rejection of the “market transition” process. Complex, multi-technology projects can take 1-2 years to develop. Subjecting this laborious process to the threat of continuous updates to *ex ante* values, and the resultant lowering of incentives and altering project economics, will discourage customers from program participation and lead to more lost opportunities.

So we urge the Commission to take the complaints seriously and to work with all of the relevant stakeholders – PAs, implementers and customers – to reform the custom project review

process.

Conclusion

NAESCO appreciates the work that ALJ Edmister has done to organize a tremendous amount of information in this proceeding into clear summaries of the issues and their proposed resolution. NAESCO urges the ALJ and the Commission to continue this work by accepting the comments of multiple parties on several key issues and modifying the Proposed Decision, as follows.

1) NAESCO urges the Commission to clarify its instructions to the PAs about 3P programs, in order to facilitate innovative third party programs in 2016.

2) NAESCO urges the Commission to see that the speed of innovation in some EE technologies requires a process for updating *ex ante* values and the DEER database that keeps pace with market practices, and assures that California EE programs are implementing innovative new technologies and programs.

3) NAESCO urges the Commission to recognize that the process for *ex ante* review of custom projects has not been fixed, and that the complaints of the PAs, implementers and customers are not a “red herring” but a cry for help in addressing significant lost EE opportunities that should be addressed with a transparent review process agreed to by all of the stakeholders.

Respectfully submitted by,



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