

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

Application of Southern California Edison Company (U338E) for Approval of its Energy Savings Assistance and California Alternate Rates for Energy Programs and Budgets for Program Years 2015-2017.

And Related Matters.

A. 14-11-007  
(Filed November 18, 2014)

A. 14-11-009  
A. 14-11-010  
A. 14-11-011

**COMMENTS OF THE NATIONAL CONSUMER LAW CENTER (NCLC) AND THE CALIFORNIA HOUSING PARTNERSHIP (CHPC) ON THE PROPOSED DECISION AND ALTERNATE PROPOSED DECISION ON LARGE INVESTOR-OWNED UTILITIES' 2015-2017 CALIFORNIA ALTERNATE RATES FOR ENERGY (CARE) AND ENERGY SAVINGS ASSISTANCE (ESA) PROGRAM APPLICATIONS**

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## SUMMARY OF RECOMMENDATIONS

- A. The APD correctly concludes that ESAP should assist with common area measures and systems in multifamily buildings; the PD's more cautious approach should be rejected.
- B. The APD should clarify that audits will be used to guide multifamily property-specific levels of funding and property-specific measure offerings
  - 1. APD should clarify that all multifamily in-unit or common area measures identified in an ASHRAE Level 1 or 2 Audit are eligible for ESA funding, notwithstanding any other measure-specific language in other areas of the decision.
  - 2. The APD should clarify that audits will be used to guide property-specific funding levels
- C. The APD should provide clear direction on the allocation of unspent funds for the new multifamily program, and specify minimal reporting requirements.
- D. The Commission should adopt the following additional modifications to the APD's multifamily proposal:
  - 1. Provide greater specificity in the definition of "nonprofit/deed-restricted" multifamily housing
  - 2. Enable contractor choice for owners; encourage single multifamily energy efficiency implementer model
  - 3. Ensure a clear pathway exists to revise the on-bill financing (OBF) program rules
  - 4. An accounting mechanism is needed to leverage IOUs' general energy efficiency program funds with ESA
  - 5. Create reporting requirements for IOUs' "Single Point of Contact" efforts
  - 6. The Commission should adopt owner agreements for naturally occurring affordable housing, pursuant to testimony sponsored by NRDC et al.
- E. The Commission should revise the Findings of Fact and Conclusions of Law to ensure they comport with the multifamily direction in the decision's narrative, as outlined in Appendix A.

**TABLE OF AUTHORITIES**

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**I. INTRODUCTION**

The National Consumer Law Center and California Housing Partnership (collectively, "NCLC and CHPC") welcome the opportunity, pursuant to Rules of Practice and Procedure 14.3, to comment on the Proposed Decision ("PD") of Administrative Law Judge ("ALJ") Colbert and the Alternate Proposed Decision ("APD") of Assigned Commissioner Sandoval. Overall, we find that the APD represents a major step forward for the Commission in updating the Energy Savings Assistance Program ("ESAP") so that the program: (1) adequately meets the needs of low-income tenants residing in multifamily buildings, including rent-restricted low income multifamily housing properties, as well as "naturally occurring" affordable housing (e.g., non-subsidized buildings, but with affordable rents and a high percentage of low-income tenants); (2) will be required to meet modest and achievable energy savings goals, while still meeting the health and safety needs of ESAP-eligible low-income households: and (3) carries out its mission more cost effectively.

While the PD and APD are similar in some regards, NCLC and CHPC find that the APD is more forward-looking on issues regarding energy savings goals, cost effectiveness, and serving

the multifamily sector, and more aligned with California’s overall energy policies, particularly the Clean Energy and Pollution Reduction Act of 2015 (Senate Bill 350) requirement to double efficiency by 2030, and the recently passed Senate Bill 32 and Assembly Bill 197 (a continuation of California’s landmark Global Warming Act of 2006, AB 32), which require the state to reduce its greenhouse gas emissions 40% below 1990 levels by 2030 and 80% by 2050. The urgency for California’s energy programs to increase their achieved savings in all sectors – including in the multifamily sector – has only been underscored by the Aliso Canyon leak<sup>1</sup> and the ongoing drought conditions.<sup>2</sup> The APD is far more likely to result in achieving increased energy savings, which is essential if the state is to meet its several climate and energy goals.

NCLC and CHPC have been actively engaged in the ESA proceedings for five years now, starting with A.11-05-017 and including the current docket. Our interventions in these two dockets have included not only filing discovery, writing briefs and attending hearings, but also providing the testimony of one dozen expert witnesses from around the country who strongly support our core claim that ESAP can “walk and chew gum” at the same time: not only meet the health and safety needs of low-income households, but also deliver cost-effective, whole building energy savings to the affordable multifamily buildings in which low-income households are disproportionately represented. What the testimony filed in this case clearly demonstrates – and not controverted by any party – is that leading low-income multifamily programs across the country serve common areas; set savings goals; and meet cost effectiveness standards.

NCLC and CHPC see the APD as a major policy step forward and a significant improvement for low-income households residing in multifamily buildings, but the decision is neither unprecedented nor a repudiation of prior ESAP designs. Rather, it is the next logical step in ensuring that ESAP continues on an arc of ensuring that “all eligible low-income electricity and gas customers are given the opportunity to participate in low-income energy efficiency programs, **including customers occupying apartments or similar multiunit residential structures.**” Pub. Util Code § 382(e)(emphasis added).

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<sup>1</sup> See D. 16-04-040, p. 2 (Apr. 28, 2016)(ordering “immediate steps to enhance their Energy Savings Assistance Program efforts in low-income communities affected by the Aliso Canyon Gas Storage Facility natural gas leak”).

<sup>2</sup> See, e.g., Governor Brown’s January 17, 2014 declaration of a state of emergency. The original declaration of a state of emergency and subsequent executive orders can be found here: <http://www.water.ca.gov/waterconditions/declaration.cfm>

## II. MULTIFAMILY PROGRAM DISCUSSION

### A. The APD correctly concludes that ESAP should assist with common area measures and systems in multifamily buildings; the PD's more cautious approach should be rejected

#### 1. Prior Commission Precedent, Governing Statutes, and the Record Developed in this Proceeding Strongly Support the Use of ESA Funds for Common Area and Central Systems.

In D. 12-08-044, the August 30, 2012 “Phase I” decision in A. 11-05-017, the Commission – which at that earlier date was clearly opposed on policy grounds to allowing ESAP to assist with common areas/common systems in multifamily buildings – still acknowledged that nothing in the Civil Code, including Section 1941.1 regarding the warranty of habitability, “prohibit[s] the use of ratepayer funds to provide assistance to the landlords to invest in energy efficient rental units.” *Id.*, at 104.

By the time the Commission issued its Phase II decision on August 20, 2014, it had become more apparent – in large part due to the Multifamily Segment Study the Commission’s Phase I decision ordered undertaken – that the multifamily sector was being underserved and that major program design changes were needed if that sector was to be fairly served. The Commission formally ordered that “the Multifamily Segment Study” be “adopted” (D. 14-08-030, Ordering ¶ 34, p. 118) and separately ordered the companies to “propose new, cost-effective measures for the multifamily sector, **including common area measures and central heating, cooling, and hot water systems.**” *Id.*, Ordering ¶ 41, p. 121 (emphasis added). Thus, it is now abundantly clear from prior decisions that the Commission not only has the legal authority to require the ESAP-administering utilities to serve common areas/systems in which low-income households reside, but that as a separate policy matter ESAP *should* serve those common areas if tenants in multifamily housing are to be given the fair and reasonable access afforded other ESAP-eligible households. As the APD notes, there has been a “long history of low participation rates” among otherwise eligible multifamily properties in the range of utility-sponsored energy efficiency programs. APD, p. 186. The APD is thus a continuation of prior Commission policy and responds to the failure of the companies to implement the clear mandates of the Phase II order. (See APD, p. 171, summarizing NRDC et al. position).

Both the APD and PD contain some similar recommendations about how to improve the services ESAP provides to multifamily buildings. Each urges better coordination with the Tax Credit Allocation Committee (PD, p. 150; APD, p. 189); improving how the utility delivers true one-stop EE shopping (PD, p. 153; APD, p. 189); proposes to leverage the significant resources available from the Low-Income Weatherization Program (PD, p. 151; APD, p. 191); and requires the utilities to do a better job of informing multifamily property owners about on-bill financing (OBF) opportunities (PD, pp. 154-155; APD, pp. 192-193). NCLC and CHPC support these changes, which largely reflect the testimony we provided in this proceeding.<sup>3</sup>

However, the PD and APD differ in one significant aspect, as to their respective recommendations for the multifamily sector. The APD comes out strongly in support of having ESAP provide assistance for common area measures, citing to the Multifamily Segment Study and the extensive record built up by NRDC et al. As Commissioner Sandoval elsewhere notes in the APD:

[A]n underlying theme has emerged for the ESA and CARE Programs. In particular, as we examine approaches, expectations and tools for the ESA Program, **we have examined whether the current approach of direct install interventions with increasing budgets and limited flexibility to achieve energy savings, is sustainable or sufficient for the needs of the modern grid . . .**<sup>4</sup>

The record in this docket as well as in A. 11-05-017 makes unequivocally clear that the “the current approach” simply is not working in terms of “achiev[ing] energy savings” in the multifamily sector, even with ESAP’s ever-“increasing budgets,” due to its very “limited flexibility.” The APD wisely proposes significant changes to the inadequate status quo.

**2. The APD’s multifamily proposal to use ASHRAE audits to identify site-specific cost-effective common area and in-unit measures will ensure the multifamily sector savings are at least as cost-effective as ESA overall**

While the PD also proposes modest changes to the status quo, as noted above, it does not support assistance for common areas, citing to pilots that did not clearly “demonstrate the cost-effectiveness of serving multifamily buildings in this fashion and unknowns about doing so.” See PD, pp. 148-149. But, to the contrary, the APD would strongly move the multifamily program onto a decidedly **stronger** cost-effectiveness footing than has generally prevailed in

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<sup>3</sup> See Stamas Testimony, Exh. 32.

<sup>4</sup> APD, p. 42 (emphasis added).

ESAP throughout its history. To date, ESAP measures on prescribed “direct install” lists are assumed cost-effective, regardless of the actual building conditions where installed, because, on average, they have demonstrated cost-effectiveness. The APD would subject common area/system measures to a much stricter standard, one that NCLC and CHPC have been proposing over their many years in these ESAP dockets: measures would be installed in a particular building only if a high-quality audit (ASHRAE or equivalent) determines that the measures will be cost-effective at that site. APD, pp. 173-174 (summarizing NRDC et al. recommendation); 197-198 (adopting NRDC et al. recommendation).

We do share the concerns voiced in the PD regarding the need for ESA’s multifamily offerings to be cost-effective. NCLC and CHPC have strongly advocated for stricter compliance across all of ESAP’s offering with cost-effectiveness standards,<sup>5</sup> and we generally support the portion of the APD adopting savings goals. However, we emphasize that the APD fully addresses cost-effectiveness concerns by requiring multifamily buildings – unlike smaller buildings served by ESAP – to demonstrate cost-effectiveness – *at the building-specific level* – before ratepayer dollars are deployed to assist that building.

In sum, we support the APD and PD in the several areas where they make similar recommendations for improving offerings to the multifamily sector. We strongly recommend that the portions of APD approving ESAP spending for common areas/common systems be adopted.

**B. The APD Should Clarify that Audits will be used to Guide Multifamily Property-specific Levels of Funding and Property-specific Measure Offerings**

**1. The APD Should Clarify that All Multifamily In-unit or Common Area Measures Identified in an ASHRAE Audit Are Eligible for funding, *notwithstanding any other measure-specific language in other areas of the decision.***

NCLC and CHPC strongly support the APD’s direction to fund common area measures in income-qualified multifamily housing and to use ASHRAE audits to inform the level of site-specific funding, as reflected in our testimony.<sup>6</sup> However, the APD contains conflicting language elsewhere in the document that could result in minimal deployment of new measures for

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<sup>5</sup> See NRDC, CHPC, NCLC Opening Brief, p. 18.

<sup>6</sup> APD, p. 198.



multifamily properties.<sup>7</sup> We urge the Commission to make absolutely clear that notwithstanding any other measure-specific language in other areas of the document, the multifamily component of ESA will use audits to determine which in-unit and common area measures to deploy. We provide specific proposed changes to the Findings of Fact and Conclusions of Law in Appendix A to reflect this recommendation.

## **2. The APD should clarify that Audits Will be Used to Guide Property-specific Funding Levels**

While the APD sets out different levels of funding support for deed-restricted and market rate multifamily buildings, it also includes language directing the use of audits to determine property-specific funding levels.<sup>8</sup> To align these two potentially conflicting directives, we recommend changes to the APD to ensure audits provide high-level direction on the level of property-specific funding. These changes would also align with the record in this case, whereby we recommended funding common area and central system measures subject to audit findings that would guide the choice of measures and funding levels.<sup>9</sup> We urge the Commission to clarify that audits will be used to guide property-specific funding levels as described further in Appendix A outlined below:

“...as suggested by NRDC et al, notwithstanding any other measure-specific language in other areas of this decision, we approve full funding and deployment of the cost effective portion of all in-unit and common area measures recommended by an ASHRAE Level 1 or 2 audit or equivalent, including, but not limited to, HE central air conditioning, central heating, [and] water heaters, commissioning and lighting, and also approve ...”<sup>10</sup>

## **3. The APD should clarify approved uses of ASHRAE level 2 audits**

NCLC and CHPC support the language in the APD stating “We agree with NCLC and CHPC’s suggestions to allow for projects participating in other IOU programs and ESA to use

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<sup>7</sup> See, APD, pp. 79-134 on measures and p. 190: “To aid in stretching the limited LIWP funds, we direct the IOUs to create a new balancing account to fund only measures currently offered by the ESA Program and approved for multifamily households.”

<sup>8</sup> See, e.g., APD pp. 185-186 and APD. pp. 197-198: “We require the utilities to comply with D.14-08-030 by providing specific common area measures and central heating, cooling, and hot water measures, subject to energy assessment findings and ....”

<sup>9</sup> See Stamas Testimony, Exh. 32.

<sup>10</sup> APD p.184

ASHRAE level 2 audit findings to inform ESA installations.”<sup>11</sup> As described in our earlier testimony, this level of energy assessment is needed to maximize energy savings and assure efficient and reasonable use of ratepayer funds.<sup>12</sup> We recommend that the APD precisely define the conditions that qualify for an ASHRAE Level 2 audit, and revise the stated requirement to be consistent with the APD-supported recommendation as shown:

“We require (and fund) ASHRAE level 1 energy audits for all buildings participating in the multifamily component of the ESA and [*consider requiring*] **offer (and fund)** ASHRAE level 2 audits for projects that involve major capital improvements, such as properties with **buildings of four or more stories, or with 50 or more units.**”<sup>13</sup>

### **C. The APD Should Provide Clear Direction on the Allocation of Funds for the New Multifamily Program, and Specify Minimal Reporting Requirements**

#### **1. APD Should Clarify that Utilities Will Direct 32% of the 2009-2015 Unspent Funds towards the new multifamily ESA component, and 15-25% of those funds for [government/nonprofit or deed-restricted multifamily housing].**

NCLC and CHPC strongly support the clear direction provided in the APD to the IOUs to increase their spending on ESA-eligible multifamily housing, but recommend the Commission clarify the exact levels of funding and funding caps, and not allow “up to” language to create the unintended result of little to no funding allocations. We therefore urge the Commission to revise its language as outlined below and described further in Appendix A:

“we direct ~~authorize~~ the IOUs to spend ~~at least up to~~ 32% of the unspent funds on the multifamily program authorized by this Decision, and allow the IOUs to file a Tier 2 Advice letter with the Commission’s Energy Division to increase that authorization up to 50% of unspent funds.”<sup>14</sup>

Given the IOUs’ past inability to spend ESAP funds on this sector, we believe the clarification is essential.

We also support a clear requirement that 15-25% of the total unspent fund balance address needs of the [government/nonprofit or deed-restricted multifamily housing]. To clarify how these two funding requirements interact, we further recommend the revisions below:

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<sup>11</sup> APD p. 197

<sup>12</sup> See Stamas Testimony, Exh. 32.

<sup>13</sup> APD p. 197

<sup>14</sup> APD p. 197

“In light of the large unspent funds balance from previous program cycles, IOUs are directed to use that unspent fund balance to address the needs of this [government/nonprofit or deed-restricted multifamily housing] sector. We limit the use of unspent funds for this sector’s needs to 15-25% of the total unspent fund balance, which is approximately \$100 million.”<sup>15</sup>

We recommend that additional language be added to the Decision to make clear that based on the experience of the new multifamily program, the 32% -50% allocation for multifamily will be a benchmark for funding on an ongoing basis, and the 15-25% allocation for deed-restricted housing applies specifically to the current balance of unspent funds that have accrued since 2009. This may seem like common sense, but because of the important consequences of these allocations, NRDC/NCLC/CHPC strongly recommend that it be carefully spelled out in the Decision, including its Findings and Recommendations, as we put forward in Appendix A.

**2. Setting Multifamily Reporting Requirements and Ensuring Utilities Expend Reasonable Efforts**

We recommend that the Decision specifically direct the IOUs to (1) use all reasonable efforts to expend funds on the new multifamily component of ESA, as authorized in this Decision, and (2) provide regular and timely updates on expenditures and overall progress on the new multifamily initiatives to which these funds are now dedicated.

**D. The Commission Should Adopt the Following Additional Modifications to the APD’s Multifamily proposal:**

**1. The APD needs a more specific definition of “nonprofit/deed-restricted” multifamily housing.**

NCLC and CHPC fully support and appreciate the level of detail provided in the APD to define Government/non-profit/or deed restricted low-income multifamily housing. However, based on our experience with other government programs serving this housing sector, we recommend the following clarifications of the definition of housing which ESAP can serve at no cost (shown in bold underline):

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<sup>15</sup> APD p. 185

“Some multifamily properties [buildings] are dedicated to providing affordable rents to low-income populations through deed restriction, ownership, or contract. Examples include properties [buildings] owned by the U.S. Department of Housing and Urban Development (HUD), Tribal Housing for low-income tribal members, housing [own-and-run] legally controlled by local housing authorities, non-profit organizations or other owners where the building is deed or contract restricted to house low-income tenants under an agreement with HUD, the California Department of Housing and Community Development and/or the State Treasurer’s Office (hereinafter “Government/non-profit/or deed restricted rent-restricted low-income multifamily housing”) restricting rents to affordable levels based on tenant income levels, that are regularly verified by HUD or the specified state agency.”<sup>16</sup>

The first proposed revision clarifies that the property is “controlled” rather than “owned” is necessary to avoid confusion that may occur due to the unique nature of how rent-restricted low-income multifamily housing is financed. CHPC has documented instances where nonprofit organizations have been told their properties are ineligible for nonprofit incentive programs simply because the agency granting the incentives did not properly recognize their control of these properties through their role as the managing general partner in a limited partnership or the managing member in a limited liability corporation, ownership structures that are required by the Internal Revenue Service to take advantage of the federal Low Income Housing Tax Credit (LIHTC) program.

The second proposed revision adds precision about the conditions required for categorical eligibility, including monitoring and enforcement by a federal or state agency.

## **2. The APD Should Enable Contractor Choice for Owners and Encourage a Single Multifamily Energy Efficiency Implementer Model**

NCLC and CHPC put forth testimony documenting the reduced costs and implementation ease that would result from (1) enabling owners to choose their contractors, as is done by utilities’ MF-EUC programs, and (2) employing a single one-stop multifamily energy efficiency implementer model.<sup>17</sup> While the APD contains some supportive language, (citing that

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<sup>16</sup> APD p. 183

<sup>17</sup> See Testimony of Samara Larson, noting “The utilities’ Energy Upgrade [MultiFamily] pilot programs allow owners to choose the contractors. This was a huge benefit for program coordination because we could select a general contractor with experience working on multifamily buildings, who would then organize the work of various subcontractors... . Enabling contractor choice and reducing the number of contractors involved in a coordinated energy efficiency retrofit would greatly reduce administrative time and expense.” NRDC/NCLC/CHPC Testimony of Samara Larson “Multifamily Property Owner’s Perspective On ESAP” p. 6.

numerous examples exist –demonstrating that “a single program implementer program design may overcome many of the administrative barriers experienced by this housing sector.”<sup>18</sup>), we encourage the Commission to strengthen this language.

Specifically, we recommend the APD (1) additionally direct all utilities to allow contractor choice for multifamily properties participating in the new multifamily program authorized in the Decision, and (2) to contract with a single IOU Multifamily administrator or Implementer similar to the model used by CSD for the LIWP program.

### **3. On Bill Financing (OBF) Program Rule Change Needed.**

NCLC and CHPC support the direction in the APD for utilities to propose modified loan terms in their IOUs Business Plans in R. 13-11-005 to: (1) better integrate OBF with the ESA SPOC model that has been further established and empowered in this Decision; and (2) consider and, if warranted, propose modified loan terms that are more accessible to the multifamily market.”<sup>19</sup>

CHPC supported the design and implementation of the Master-Meter Multifamily On-Bill Repayment (OBR) Pilot, approved by the Commission in D. 13-09-044. CHPC developed and field-tested a prepilot OBR program and worked closely with owners of nonprofit rent-restricted multifamily housing who attempt to use this program. We would like to elaborate on the observation in the APD that “It appears that the underutilization of the OBF program among multifamily properties is the result of a lack of awareness and an unwillingness to tap into loans of up to \$100,000 with five-year payback terms”<sup>20</sup> The main reason these owners have not used the OBF program is that the five-year term and \$100,000 financing limits render this program virtually useless for the types of improvements with longer estimated useful lives that are required to achieve deeper savings at these complex properties. CHPC’s prepilot test of OBR has shown that OBR will be difficult to develop as a successful financing tool for the rent-restricted multifamily housing sector due to several structural factors. First, owners of these properties have severe challenges in persuading senior lien holders to agree additional debt of any kind outside of a refinancing, meaning that to be successful in its mission of funding energy

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<sup>18</sup> APD p. 192

<sup>19</sup> APD p. 194

<sup>20</sup> APD p. 193

retrofits, OBR must be structured as non-debt financing. Secondly, it is extremely difficult to find capital sources willing to forgo traditional collateral structures (deed of trust, promissory note, etc.) to provide financing of this type.

The simple solution to this problem is to revise the rules for the On Bill Financing (OBF) program to enable low-income rent-restricted multifamily housing properties to have access to the OBF terms provided for government properties, specifically an OBF per property limit of \$250,000 with a ten-year term. Low-income rent-restricted multifamily housing of this type is so regulated by government agencies as to be virtually indistinguishable from properties owned directly by federal, state and local governments. Accordingly, it is fair and reasonable that these properties be provided OBF terms comparable to government properties. This change would allow these properties, which generally have limited to no ability to increase rents or cash flow to pay for even a portion of energy efficiency retrofit costs, to take advantage of ESA services by providing them with a tool for paying for non-eligible but related program costs.

#### **4. An Accounting Mechanism is Needed to Leverage IOUs' General Energy Efficiency Program Funds with ESA**

NCLC and CHPC support the APD recommendation to create an ESA balancing account that will establish funding for leveraging LIWP-MF Cap-and-Trade funding because LIWP-MF requires an ASRAE II audit and performance based measures but does not provide 100% financing of these measures. As we documented in our testimony, previous directives to coordinate have failed, and justify the creation of this new balancing account approach.<sup>21</sup>

We further recommend the Commission modify the APD to authorize the creation of a second accounting mechanism in ESA to leverage the IOUs' general Energy Efficiency programs (such as Energy Upgrade California for Multifamily and the Regional Energy Networks.) These programs, like LIWP, take a performance-based whole building approach. In our testimony, we documented how sequentially layering ESA with EUC has largely been impracticable.<sup>22</sup> For this reason, we urged the Commission to consolidate these programs and proposed an ESA-adder

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<sup>21</sup> See NRDC et al. Opening Brief, p. 56 and Robbins Testimony, Exh. 41, p. 14, describing how New York and Vermont successfully combine funds among several implementing agencies.

<sup>22</sup> Stamas Testimony, Exh. 32, p. 25.

as a potential solution.<sup>23</sup> While the majority of EUC programs have small budgets and are in pilot stages,<sup>24</sup> it is still important to provide an accounting mechanism that could accommodate future potential programmatic growth.

#### **5. The Commission Should Create Reporting Requirements for IOUs' "Single Point of Contact"(SPOC) Efforts**

While the APD directs IOUs to expand their use of the SPOC model, it also notes "It is unclear what source each utility uses to fund its ESA SPOC program."<sup>25</sup> While we support the direction that the IOUs describe how they will use SPOC budgets to provide technical assistance for multifamily OBF financing projects, much more coordination from a SPOC will be required beyond OBF technical support. To ensure sufficient budgets are allocated to meet this need, we recommend that the SPOC budget for all of the new initiatives authorized in this Decision be described in the ESA/CARE Annual Reports. This should include SPOC technical assistance for the new multifamily program authorized by this decision to provide common area measures and audits provided throughout the State, as well as the Decision-directed SPOC activities in the Aliso Canyon affected area.

#### **6. The Commission Should Adopt Owner Agreements for Naturally Occurring Affordable Housing, Pursuant to Testimony Sponsored by NRDC et al.**

To protect against any potential rent increases in the market rate sector, we encourage the Commission to order ESA's multifamily program implementers to adopt agreements with owners of low-income multifamily properties that lack rent-regulatory agreements stipulating that these owners will not increase rents for a set period of time in exchange for accepting any significant level of program funding. We refer the Commission to agreements used in Massachusetts, New York, and for ARRA Multifamily programs, as documented in our testimony.<sup>26</sup> The LIWP program is also in the process of developing a California version of these agreements that may be an even more useful model.

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<sup>23</sup> See Amy Dryden Testimony, Exh. 44, p. 5.

<sup>24</sup> Stamas Testimony, Exh. 32, p. 25.

<sup>25</sup> APD p. 186 and p. 195.

<sup>26</sup> Hepinstall Testimony, Exh. 46, pp. 4-5 and appendix; Wells Testimony, Exh. 43., p. 6 and appendix.

### III. CONCLUSION

NCLC and CHPC appreciate the opportunity to offer these comments and recommendations to the Proposed Decision and Alternate Proposed Decision On Large Investor-Owned Utilities' 2015-2017 California Alternate Rates For Energy (CARE) And Energy Savings Assistance (ESA) Program Applications. We encourage the Commission to adopt the preceding recommendations to ensure the efficiency and effectiveness of the ESA Program in the 21<sup>st</sup> Century.

Respectfully submitted,

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## APPENDIX A

### Proposed Revisions to APD Narrative, Findings of Fact (FOF), Conclusions of Law (COL), and Ordering Paragraphs

Notes:

- Proposed deletions shown in *[brackets & Italics]*; additions in **bold underline**
- APD numbering system retained; additions numbered by decimal point, e.g. “New COL 85.1”
- Suggested amendments below apply to APD’s Multifamily Program Provisions, including the Narrative, FOF 47-51, COL 29, 81-87, and Ordering Paragraphs 39-41.

#### **Revise APD narrative p.183 re: “Deed-restricted” for absolute clarity**

“Some multifamily **properties** *[buildings]* are dedicated to providing affordable rents low-income populations through deed restriction, ownership, or contract. Examples include **properties** *[buildings]* owned by **the** U.S. Department of Housing and Urban Development (**HUD**), Tribal Housing for low-income tribal members, housing *[own and run]* **legally controlled** by local housing authorities, non-profit **organizations** or other owners where the building is deed or contract restricted to house low-income tenants **under an agreement with HUD, the California Department of Housing and Community Development and/or the State Treasurer’s Office restricting rents to affordable levels based on tenant income levels, that are regularly verified by HUD or the specified state agency (hereinafter “rent-restricted low-income multifamily housing”)**).

#### **Revise APD narrative p. 184 re: “Common area measures” for consistency with NRDC et al recommendation and narrative text on p. 197<sup>27</sup>**

“...as suggested by NRDC et al, **notwithstanding any other measure-specific language in other areas of this decision**, we approve full funding **and deployment of the cost effective portion of all in-unit and common area measures identified by an ASHRAE Level 1 or 2 audit (or**

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<sup>27</sup> “We require the utilities to comply with D.14-08-030 by providing specific common area measures and central heating, cooling, and hot water measures, subject to energy assessment findings and ...”) APD, p. 197.

**equivalent)**, including, **but not limited to**, HE central air conditioning, **central heating**, *[and]* water heaters, and lighting...”

**Revise APD narrative p. 190 to clarify that the multifamily component of ESA is not limited by currently offered measures**

“To aid in stretching the limited LIWP funds, we direct the IOUs to create a new balancing account to fund *[only measures currently]* **any measures** offered by the **new** ESA **Multifamily** Program and approved for multifamily households.”

**Revise APD narrative p.197 re: ASHRAE audits for consistency with NCLC and CHPC recommendation cited on p. 197<sup>28</sup>**

“We require (and fund) ASHRAE level 1 energy audits for all buildings participating in the multifamily component of the ESA and *[consider requiring]* **offer (and fund)** ASHRAE level 2 audits for projects that involve major capital improvements, such as properties with **buildings of four or more stories, or with 50 or more units.**”

**Revise APD Findings of Fact 47-51 pp.393-394**

47. A **significant** subset of **California’s** *[the]* low-income population lives in **rent**(*deed*)-restricted affordable housing in multifamily **properties** *[buildings]*. The owners of these **properties** *[buildings]* *[could be]* are **legally controlled by local housing authorities** *[government]*, non-profit **organizations** or other **owners** that restrict **occupancy** by deed **or contract** *[ownership]* *[and tenancy]* to *[the]* low-income populations *[and operate]* **under an agreement with HUD, the California Department of Housing and Community Development and/or the State Treasurer’s Office restricting rents to affordable levels based on tenant income levels, that are regularly verified by HUD or the specified state agency (hereinafter “rent- restricted low-income multifamily housing”)**.

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<sup>28</sup> See APD, p. 197: “We agree with NCLC and CHPC’s suggestions to allow for projects participating in other IOU programs and the ESA to use ASHRAE level 2 audit findings to inform ESA installations.”

48. Treating common areas of multifamily buildings is important to improving the energy consumption of the physical structure in which low income tenants live. Failure to treat the common areas of a multi-unit building *[may]* undermine the effectiveness of **measures** implemented *[to the]* inside of a dwelling unit.

**NEW FOF 48.1: The Commission finds that the multifamily market segment that houses predominantly low-income Californians has been substantially underserved by ESA and by the CPUC's energy efficiency and other programs, and therefore requires additional funding and programmatic focus through ESA. The Commission further finds that it is reasonable to deploy the substantial unspent ESA fund balances to meet the needs of this sector to reduce energy hardships for low-income Californians, and to meet our energy conservation and GHG reduction targets.**

[Source: APD p. 197]

**NEW FOF 48.2: The Commission finds that ESA funds that have been authorized but unspent are a resource available to support new program efforts authorized by this Decision. The Commission further finds it reasonable to require IOUs to carefully document their use of unspent funds and report progress on the new initiatives to which these funds are dedicated in the IOUs Annual Reports.**

[Recommendation of NCLC and CHPC]

**NEW FOF 48.3: It is reasonable to allow for energy efficiency projects participating in other IOU programs and ESA to use American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Level 1 and 2 audit findings to inform ESA installations. [APD p.197]**

49. It is reasonable to use ESA **funds to pay for 100% of the cost of audits and the cost-effective portion of all in-unit and common area measures identified by an ASHRAE Level 1 or 2 audit or equivalent** for the subset of multifamily buildings dedicated to providing affordable

housing to low-income Californians, [*including deed restricted, government and non-profit owned*] **referred to in this Decision as rent-restricted low income multifamily housing [buildings].**

50. It is reasonable to fund from ESA common area measures for multifamily buildings that have 80% verified low-income tenants, with funding **audits and** up to 80% of total measure costs.

**NEW FOF 50.1: It is reasonable to spend 32% of the ESA unspent funds on the multifamily program authorized by this Decision and allow the IOUs to file a Tier 2 Advice letter with the Commission’s Energy Division to increase that authorization up to 50% of unspent funds upon a showing as specified in this Decision.**

[Source: APD p. 197]

**NEW FOF: 50.2: It is reasonable to spend 15-25% (approximately \$100 million) of the total current unspent fund balance, which is approximately \$400 million, to meet the needs of eligible rent-restricted low income multifamily housing properties for treatment to the building’s physical structure including common areas.**

[Source: APD p. 185]

51. In regard to program delivery and ESA measure offerings made available in the multifamily sector, the IOUs propose a “layering” or “loading order” approach that relies on integrating and incrementally delivering the ESA Program alongside current EE offerings to eligible and willing properties.

**NEW FOF 51.1: The record in this proceeding, including Commission funded evaluations, demonstrates that a single program implementer program design is likely**

**to overcome many of the administrative barriers experienced by the multifamily housing sector and encourages utilities to adopt this model.**

*[Source: APD p191-2]*

**Revise APD Conclusions of Law (COL) 29 p. 442 and COL 82-87 pp.459-461**

COL 29: The IOUs should coordinate their ESA efforts with their activities in Energy Efficiency proceeding R.13-11-005 and present plans for full integration in their next ESA cycle applications. **In this program cycle, the IOUs should adopt an ESA accounting mechanism to leverage funds from the IOUs' general Energy Efficiency programs such as Energy Upgrade California (EUC). This accounting mechanism would apply to qualified whole building performance-based retrofits in multifamily housing for rent-restricted low-income multifamily housing properties, and for multifamily buildings that have 80% verified low-income tenants.**

*[Source: APD pp.190-191, and Recommendation of NCLC and CHPC]*

COL 79. The IOUs should create a new balancing account to fund *[only]* measures *[currently]* offered by the [ESA Program] **New Multifamily ESA component**; using projected installation rates for these measures, coupled with IOU costs for both labor and the measures, the IOUs should work with CSD **and the multifamily working group** to calculate the projected funding level for this effort.

COL 81. The IOU OBF plans should aim to: (1) better integrate OBF with the ESA SPOC model that has been further established and empowered in this Decision; and (2) propose modified terms that are more accessible to the multifamily market. **IOUs are directed to revise OBF program rules to enable low-income multifamily housing properties with rents restricted by a federal or state agency with a remaining term of at least ten (10) years to access the OBF terms available to government-owned properties.** The plans should identify strategies, update

program design, and include detailed marketing plans to reach the multifamily sector, including specifically the rent-restricted low-income multifamily housing sector.

82. The IOUs should identify in ESA Annual Reports how they will utilize SPOC budgets to include technical assistance for **the new multifamily efforts authorized by this decision to provide common area measures, building commissioning, audits and** OBF financing. *[ and t]* The IOUs SPOC shall communicate low-income EV opportunities to owners of **low-income multifamily housing properties**.

83. SCE and SoCalGas *[should]* **shall** file a Tier 2 Advice letter within 60 days to establish technical assistance programs for low-income multifamily energy efficiency retrofits in the areas affected by the Aliso Canyon State of Emergency, as those geographical regions may be adjusted by the Commission's Energy Division. The funding for such a technical assistance program should come from unspent ESA funds **and include comprehensive assistance in obtaining the new program features and funding authorized by this Decision**.

84. The IOUs shall draw all available funds as authorized in this Decision from their unspent ESA balances to fund ESA multifamily building efforts authorized by this decision, including, **but not limited to, audits, common area measures,** program coordination and leveraging efforts, development of appropriate MOUs, and administration of this program segment.

85. California Public Utilities Code Section 382(e) directs the Commission to ensure that all eligible low-income electricity and gas customers are given the opportunity to participate in low-income energy efficiency programs, including customers occupying apartments or similar multiunit residential structures.

**NEW COL 85.1: ESA treatment at the property level, not just inside the dwelling unit, is authorized by California statute. California Public Utilities Code Section 2790 (c) states "Weatherization" may also include "other building conservation measures,**

**energy-efficient appliances, and energy education programs determined by the Commission to be feasible, taking into consideration for all measures both the cost-effectiveness of the measures as a whole and the policy of reducing energy-related hardships facing low-income households.”** [Source: APD: p.181-182]

**NEW COL 85.2: The Commission ruled in D. 12-08-044 “The Civil Code Section 1941.1 merely creates landlords’ legal responsibility to maintain habitable rental property. It does not create an explicit prohibition that ratepayer funds cannot be used to provide assistance to the landlords to ensure habitable rental units. It also does not prohibit the use of ratepayer funds to provide assistance to the landlords to invest in energy efficient rental units.”**

[Source: D. 12-08-044, page 104]

**NEW COL 85.3: The California Legislature approved AB 1124 in 2012 amending the California Civil Code adding the following provisions: Sec 1941.1(b) “Nothing in this section shall be interpreted to prohibit a tenant or owner of rental properties from qualifying for a utility energy savings assistance program, or any other program assistance, for heating or hot water system repairs or replacement, or a combination of heating and hot water system repairs or replacements, that would achieve energy savings.”**

[Source: California Civil Code]

**NEW COL 85.4: For purposes of the ESA multifamily property services authorized by this decision, notwithstanding any other measure-specific language elsewhere in the decision, IOUS shall fully fund and deploy the cost effective portion of all in-unit and common area measures recommended by an ASHRAE Level 1 or 2 audit, including, but not limited to, HE central air conditioning, central heating, water heaters, and lighting.**

[Source: APD p. 184 as proposed above to be revised.]

NEW COL 85.5: IOUs are required to provide and fund ASHRAE level 1 energy audits for all properties participating in the multifamily component of ESA and shall offer AND FUND ASHRAE level 2 audits for projects that involve major capital improvements, such as properties with buildings of four or more stories, or with 50 or more units  
[Source: APD p. 197 as proposed above to be revised.]

NEW COL 85.6: IOUs are directed to spend 32% of the ESA unspent funds on the multifamily program authorized by this Decision, and allowed to file a Tier 2 Advice letter with the Commission's Energy Division to increase spending up to 50% of unspent funds upon a showing that the multifamily program has experienced high demand and is well-designed to reduce energy use or increase the health, safety, and comfort of low-income customers living in multifamily households. IOUs are directed to use all reasonable efforts to expend funds as authorized in this Decision and report unspent funds expenditure amounts and purposes in the IOUs Annual Reports on CARE/ESA.

[Source: APD p. 197]

New COL 85.7: IOUs are directed to use all reasonable efforts to expend funds on the new multifamily component of ESA as authorized in this Decision in a timely manner, and to report unspent funds expenditure amounts and purposes in the IOUs Annual Reports on CARE/ESA.

86. Subject to ASHRAE Level 1 and 2 audits (or their equivalent), full funding for common area measures should occur for *[Government/non-profit/or deed restricted low-income multifamily housing. ]* rent-restricted low income multifamily housing properties.

NEW COL 86.1: IOUs are directed to spend 15-25% (approximately \$100 million) of the total unspent fund balance for treatment to the physical structure (including common areas) in rent-restricted low-income multifamily housing properties.



[Source: APD p. 185]

87. Single Point Of Contact services shall be provided for all low-income multifamily properties; if a non-rent-restricted multifamily property has a verified 80% low-income population or above, then **audits** and up to 80% of the funding for common area measures should come from ESA.

**NEW COL 87.1: The IOUs are directed to integrate their intake processes and forms for ESA with those of all other programs available to multifamily properties to the greatest extent possible in the shortest possible time, in order to reduce the administrative burden on multifamily property owners in an expeditious manner.**

[Source: APD p.189]

**NEW COL 87.2: The IOUs are directed to allow contractor choice for owners of low-income multifamily properties participating in the new multifamily ESA authorized in the Decision.**

[Source: NCLC and CHPC recommendation]

**NEW COL 87.3: The Commission directs the IOUs to engage a single multifamily energy efficiency implementer for the new Multifamily ESA Component.**

[Source:NCLC and CHPC recommendation]

#### **Revise Ordering Paragraphs 39-41**

39. **Notwithstanding any other measure-specific language in this Decision**, Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company shall fund in the Energy Savings Assistance Program **the cost effective portion of all in-unit and common area measures identified by an ASHRAE Level 1 or 2 audit** for the subset of multifamily buildings dedicated to providing affordable housing to low-income Californians, including deed restricted, government and non-profit owned multi-family buildings.

40. **Notwithstanding any other measure-specific language in this Decision,** Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company shall fund from the Energy Savings Assistance Program **the cost effective portion of all in-unit and common area measures identified by an ASHRAE Level 1 or 2 audit** [*common area measures*] for multi-family buildings that has 80% verified low-income tenants, with funding up to 80% of total measure costs.

41. Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company shall provide renters residing in multifamily properties with information and pre-paid postage that they can pass on to their landlords on behalf of the Energy Savings Assistance Program, **in cases where outreach is not done directly through owners, for example in market rate buildings with less than 80% verified low-income tenants.**

**NEW Ordering Paragraph 41.1: The utilities shall meet with the multifamily working group to inform the design of the new ESA multifamily component and on a quarterly basis to inform implementation efforts.**