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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)**

COMMENTS OF THE
NATIONAL ASSOCIATION OF ENERGY SERVICE COMPANIES
ON THE
PROPSED DECISION OF ADMINISTRATIVE
LAW JUDGE FITCH OF JULY 19, 2016

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COMMENTS OF THE NATIONAL ASSOCIATION OF ENERGY SERVICE COMPANIES ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE FITCH OF JULY 19, 2016

NAESCO is pleased to offer comments on the Proposed Decision of Administrative Law Judge Fitch of July 19, 29016.

Summary of NAESCO Comments

NAESCO's comments are summarized as follows.

(1) The PD should be changed to reflect a clear demarcation between IOU portfolio administration and program implementation.

(2) The PD should provide a yearly schedule to require the IOUs to achieve 100% third party implementation by 2020.

(3) The PD leaves far too much important activity to ill-defined stakeholder group processes. The PD should be changed to set specific outcomes and deadlines by each subject area.

(4) The PD should be changed to order the IOU to allocate a meaningful amount of budget for open statewide third party solicitations, starting in 2017.

(5) The PD increases the amount of energy efficiency resources, but fails to require and independent evaluators (IE). The PD should be changed to require an IE, reporting to the Energy Division, to review all IOU energy efficiency solicitations.

Discussion

NAESCO offers the following arguments in support of its comments.

1. Portfolio Administration and Program Implementation

The PD describes the proper role for IOUs with respect to administering energy efficiency programs, but fails to properly implement its own vision: "in this decision we wish to continue to push the utilities to focus more on their role as determiners of "need" and portfolio design, and less on their role as program designers and implementers." (PD at 62). However, the PD itself seems to confuse portfolio administration with program design and implementation.

The PD states: "we will ask the utility program administrators (and other program administrators, as desired) to present to us in their business plans a proposal for transitioning the majority of their portfolios to be outsourced as described by the CEEIC, with the transition completed by the end of 2020. *Basically, all program design and delivery would be presumed to be conducted by third parties, unless the utility specifically made a case for why the program activity must be conducted by utility personnel.* " (PD at 63, *emphasis added*)

Having described a reasonable implementation policy, one followed in other jurisdictions in the U.S., the PD then seems to confuse the portfolio administration and program implementation functions, and undercuts the above-quoted policy on third party program design and implementation when it states:

"In recognition of [the Nexant] proposal, as well as certain other functions that will require utility personnel in *a portfolio design and coordination role*, we will not require 100 percent outsourcing by 2020 nor 100 percent outsourcing in the large commercial sector by 2017. Instead, we will set a minimum target of *60 percent of the utility's* budgeted portfolio (up from the previously target of 20 percent) *to be third party designed and delivered by the end of 2020*. Utility program administrators shall present their transition plans to effectuate at least this minimum level of third party delivery in their business plans for the Commission's consideration. (page 64, emphasis added).

There are three problems with the preceding statement:

(1) It seems to confuse **portfolio** administration (which includes portfolio design and coordination) with **program** delivery. CEEIC and other parties who proposed third party design and implementation of programs did not argue for 100 percent outsourcing of **portfolio**

design and coordination. The utilities can keep the administration role while outsourcing 100 percent of **program** design and implementation.

(2) It contradicts the statement made two pages earlier that the presumption is that all program design and implementation would be third party, unless the utility made a case why a program "must" be delivered by utility personnel. If the presumption is that all programs should be delivered by third parties, the goal for 2020 should not be 60 percent third party design and delivery, but 100 percent, with the utilities bearing a burden of proof that anything less than that 100 percent target "must" be delivered by utility personnel.

(3) If the goal of 60 percent third party design and delivery is to be maintained, the PD should be revised to address cost recovery. If third party designed and delivered programs are largely "pay for performance", utility programs should also be pay for performance. Otherwise, ratepayers have a higher risk profile for the 40 percent utility delivered programs which were established via a regulatory "set aside".

2. Achieving 100 Third Party Implementation

The PD establishes a 60 percent outsourcing goal for utilities by 2020. As described above, following the PD's own logic, NAESCO strongly believes that this percentage should be set at 100 percent. In order to achieve this goal, the PD should be changed to set specific yearly goals to reach the 100 percent goal by the end of 2020. NAESCO recommends a simple 25 percent per year schedule starting in 2017 (*e.g.*, 25% in 2017, 50% in 2018, 75% in 2019 and 100% in 2020). If the Commission were to adopt a goal less than 100 percent by 2020, it should set annual goals starting in 2017 to achieve whatever goal it sets.

3. The Stakeholder Processes Described in the PD Need More Structure

The PD defers many issues to stakeholder processes: streamline custom review; Preponderance of Evidence Standard; measure-level recommendations for baselines; Evidence Required for Repair Eligibility; PA and non-utility PA assignment for statewide administration; replacing the Industrial Standard Practice (ISP) with a more realistic and workable standard for industrial projects; and, picking four downstream programs for statewide administration. If the Commission is going to address complex issue resolution through loose stakeholder processes like the California Energy Efficiency Advisory Committee, the CalTF or various workshops, it should establish clear goals, processes, desired outcomes and timely deadlines for each process. NAESCO recommends that the Commission address the issues in the order listed above, and for each issue outline the structure of an expected workshop report prior to the beginning of the stakeholder process. NAESCO also recommends that the Commission establish clear guidelines as to how it will handle the recommendations of the stakeholder processes. NAESCO observes that it is difficult to keep California and national experts involved in these processes if the results of the expert deliberations are brushed aside as the recommended workpaper approvals of the CalTF have been brushed aside over the past two years.

4. Utilities Should be Ordered to Allocate Funds to Open Third Party Solicitations beginning in 2017

The Commission has listed a number of programs that must be "statewide" under its new definition beginning in 2017 (PD at 54- 55). In the past, utilities have had "open" solicitations for third-party designed and delivered programs. That is, a third party proposes its own program within a defined market segment or to address a market problem defined by the utilities. In recent years, "open" solicitations have been characterized by small amounts of funding and long, bureaucratic review, selection and approval processes. In light of the PD's "statewide" definition, which NAESCO supports, and its more robust approach to third party design and implementation, the Commission should order the utilities to run an open solicitation for a statewide program that meets the new definition proposed in this PD. NAESCO proposes a program solicitation of at least $30 million per year, starting in 2017, for true third party programs, with each utility's contribution to the $30 million budget proportional to its share of overall energy efficiency funding. In its final decision, the Commission should choose the lead utility, and order that an open solicitation be issued no later than 60 days after the adoption of the decision, with selection of winning bidders no later than 6 months after the issuance of the open solicitation.

5. The Commission Should Use Independent Evaluator (IE) for Overseeing Utility Solicitations

The PD directs the utilities to commit at least 60 percent of their budgets to third party programs by 2020. As described above, NAESCO recommends that that percentage be 100 percent. However, even if only 60 percent of the utility budgets are committed to third party programs obtained through competitive solicitations, within the 10-year rolling portfolio period billions of ratepayer dollars will be committed through competitive solicitations. When the Commission established a 20 percent minimum by utility for third party solicitations in D. 05-01-055, it established Peer Review Groups (PRGs) to assist in reviewing competitive solicitation processes and outcomes, acknowledging the need for additional oversight of a substantial part of the portfolio. Over time, however, PRGs have not played an active role in overseeing solicitations, in part because the non-market participants involved in the process lack sufficient resources for the amount of effort necessary for meaningful review.

Now, as the PD contemplates a tripling of the amount of ratepayer resources expended in competitive solicitations, there is an even greater need for independent oversight. Although NAESCO and other parties strongly supported the use of an IE in their comments and reply comments to the Assigned Commissioner/ALJ Ruling of May 24, the PD does not address the issue. NAESCO recommends that the final decision amend the PD to include the use of IEs to review competitive solicitation processes and outcomes. As we noted in our comments, IEs have successfully been utilized in the supply side of the utility business in California for many years, and would represent a very modest amount of funding to provide oversight of billions of dollars of ratepayer investments. As we also noted, it is critically important that the IEs report to the Energy Division, not the utilities, to assure market participants of their independence.

Conclusion

NAESCO recommends that the Commission revise its proposed decision as follows:

The PD should be changed to reflect a clear demarcation between IOU portfolio administration and program implementation.

The PD should provide a yearly schedule to require the IOUs to achieve 100% third party implementation by 2020.

The PD leaves far too much important activity to ill-defined stakeholder group processes. The PD should be changed to set specific outcomes and deadlines by each subject area.

The PD should be changed to order the IOU to allocate a meaningful amount of budget for open statewide third party solicitations, starting in 2017.

The PD increases the amount of energy efficiency resources, but fails to require and independent evaluators (IE). The PD should be changed to require an IE, reporting to the Energy Division, to review all IOU energy efficiency solicitations.

Respectfully submitted by,

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