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

ADMINISTRATIVE LAW JUDGE'S RULING SEEKING COMMENT ON ENERGY EFFICIENCY BASELINE POLICY AND RELATED ISSUES

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NAESCO is pleased to respond to the April 21, 2016 Ruling of Administrative Law Judge Fitch, requesting comments on the staff White Paper (WP) on implementing AB 802, and appreciates the effort that the Energy Division and its consultants put into exploring ways to best implement this vital piece of legislation. We have a number of concerns with the direction taken in the White Paper, as described below. Many of these concerns were raised in our informal comments on the January workshop that we provided to the staff on February 10, 2016. We urge the California Public Utilities Commission (Commission) to review the array of thoughtful comments provided by the diverse set of participants in the January workshops.

Summary of Comments

NAESCO's comments on the staff White Paper are summarized as follows.

1. The White Paper seems more concerned with the issues of double-counting savings than with developing a policy to implement the clear intent of the legislature.

2. The White Paper's assertion that the assignment of attribution (responsibility for causing an upgrade or efficiency investment to occur) is the <u>key</u> to shifting to an existing conditions baseline (emphasis added) mistakenly puts scorekeeping ahead of the legislature's policy goals.

3. The White Paper does not provide a clear path to the timely implementation of AB

802, but rather continues the current policy complexity, which the legislature intended AB 802 to replace.

4.The Commission needs a tool that quantifies the risks and rewards of programs moving to the use of existing baselines, as per AB 802.

5. The White Paper makes a preemptory, unsupported claim about a significant sector of the portfolio -- upstream and midstream rebate programs – which the Commission should reject.

6. NAESCO urges the the Commission to implement the broadest application of AB802 to the utilities' EE portfolio, including industrial buildings and processes.

Discussion

1. The White Paper seems more concerned with the issues of double-counting savings than with developing a policy to implement the clear intent of the legislature.

The clear intent of the legislature in enacting AB 802 is to accelerate the reduction of energy use and GHG production in the state. As the California Energy Commission (CEC) notes, the purpose of AB 802, and SB 350, is to create "new approaches and program pathways to achieve energy savings that market realities now leave untouched." (CEC, p. 42) However, the staff White Paper is instead dominated by concern over the possibility that the state might double count energy savings.

We believe that the position of the Commission is roughly analogous to that of the management of CalPERS or one of the other state pension funds. The Commission has approximately $1 billion of ratepayer funds to invest each year, and is charged with ensuring that the funds are invested in EE programs that have a good chance of achieving the state's energy and GHG policy goals with an acceptable level of risk. For the past few years, the Commission has managed the funds to minimize a certain kind of risk, restricting incentives to ensure that little or no ratepayer funding is used to subsidize "free riders," while downplaying the risk of lost opportunities due to restrictive program assumptions. But the legislature, in SB 350 and AB 802, has said that this investment strategy is not meeting the state's policy goals, much as the legislature might tell CalPERS that an investment strategy limited to US Treasuries has resulted in no recorded losses, but is not producing enough income to support the state's pensioners. The legislature is, in effect, pushing the Commission to be more aggressive in pursuing savings to achieve more reward, in the form of lower overall state energy expenditures and lower state GHGs.

Unfortunately, as the California Energy Commission (CEC) has outlined in its analysis (WP, Appendix B), the state does not currently have the full data set required to eliminate all the uncertainties of moving to the higher risk/higher reward strategy. The CEC acknowledges that it is important to implement the new strategy despite the uncertainties (WP at 46) and cautions the Commission that continuing its current policy of restricting incentives to the sure winners "can only partly reduce uncertainty about total savings." (WP at 50) We believe this means that in order to fulfill the mandate and goals of SB 350 and AB 802, the Commission must change its practice and take risks that it has historically not taken.

2. The White Paper's assertion that the assignment of attribution (responsibility for causing an upgrade or efficiency investment to occur) is the <u>key</u> to shifting to an existing conditions baseline (emphasis added) mistakenly puts scorekeeping ahead of the legislature's policy goals.

We think that the focus on attribution is mistaken for several reasons.

First, the staff offers no support for this assertion. In fact, there are many significant markets (the Municipalities, Universities, Schools and Hospital (MUSH) markets, and the entire public sector generally) where attribution is simply not an issue. Customers in these markets have been constrained for capital funds for decades and have no realistic prospect of obtaining access to the funds they need in the foreseeable future. Their capital budgets do not provide for replacement of key equipment, and as a result inefficient energy-using equipment is repaired indefinitely and kept in service long past its "expected useful life." Absent strong financial support from the ratepayer-funded energy efficiency programs, public sector customers will not make the investments needed to capture the energy and GHG savings envisioned by the legislature.

Second, the legislature has already made the policy decision to measure savings based on normalized metered energy consumption, not on attribution. (See AB 802, Section 6(b)) The staff should not use the White Paper to re-argue a policy position with which it may disagree.

Third, while arguing that attribution is "key" the White Paper admits that its estimates of attribution are in fact highly questionable:

- "There is a **significant amount of uncertainty in estimates of stranded potential and double counting** (emphasis in original)" (WP, page 9) and
- "However, net-to-gross surveys can be problematic and not that helpful in identifying program influence." (WP, page 16)

We urge the Commission not to let the staff's concerns about attribution, which have proven to be a complex and ultimately unresolvable approach to managing the risk in the EE portfolio, prevent the state from capturing badly needed energy and GHG savings, as intended by the legislature.

3. The White Paper does not provide a clear path to the timely implementation of AB 802, but rather continues the current policy complexity that the legislature intended AB 820 to replace.

NAESCO respectfully suggests that the January workshops on the implementation of AB 802 illustrated one of the problems that afflicts the current administration of EE programs – the focus on the minutiae of double-counting and attribution at the expense of the nuts-and-bolts of timely program implementation. We expected that the workshops might work through the EE portfolio in order of their current and projected (under AB 802) contributions to California's EE goals, separating the programs into those that produce significant savings and can be easily adapted to the Net Metered Energy Consumption (NMEC) requirements of AB 802 with little or no R&D work on M&V, from those programs that will require some R&D, from those programs that will require extensive R&D. Instead, the NMEC workshop presented technologies that focus on some of the most intellectually interesting and technically difficult issues (*e.g.,* using "big data" analytic techniques to tease out the 1-2% savings produced by residential behavior modification programs).

NAESCO has suggested in previous comments in this proceeding that there are hundreds of millions of dollars' worth of projects implemented each year that can use the IPMVP, without modification, to provide the NEMC M&V required by AB 802. The Commission and staff have cited the IPMVP as a valid system under AB 802. But we need the staff and the Commission to lay out a clear path for how to apply the IPMVP, rather than the current M&V systems, starting September 1. Every day we wait to begin this real-world planning means more lost EE opportunities and more unnecessary long-term energy expenditures for ratepayers.

For example, the White Paper addresses the issue of "failed equipment" as follows: 'if equipment has failed and cannot be repaired …a code baseline should be used to calculate these savings." (WP, page 18) "For this reason, staff recommends that savings claims for burned-out or highly degraded "repair-eligible" equipment should include documentation to demonstrate that the individual equipment being replaced *could* otherwise be repaired (*i.e.,* what component broke and how the equipment could be repaired), and that the cost of repair would have been less than 50% of the replacement cost." (WP, page 28) First, the White Paper gives no justification for the 50% figure. Second, PA's cannot know if a piece of repairable equipment that would receive an existing baseline will be found far after the fact of replacement to have been "unrepairable" and therefore subject to a code baseline because it is not clear what documentation would be acceptable to staff or its consultants.

The White Paper creates a similar problem with "early retirement". To claim early retirement, an implementer must submit a "preponderance of evidence" to demonstrate that savings over pre-existing equipment for the remaining useful life (RUL) of the equipment being replaced, then savings above code-level for the rest of the EUL. (WP, page 28) This proposal suffers from the same problem as the proposed implementation of "failed equipment". Market participants cannot know until well after the fact of investment what baseline their new equipment will receive. This will lead to many desirable projects not being completed. The above two situations are very significant examples of how the White Paper could lead to great confusion in the market and thus impede implementing AB 802.

4. The Commission needs a tool that quantifies the risks and rewards of programs moving to existing baselines, as per AB 802.

We think that a tool that quantifies the risk/reward analysis can make the future path less daunting for the Commission. We think that the Commission would be comfortable risking $1 (in the form of potential "free riders" or double counting of savings) on uncertain new program approaches if the potential reward were $100 of incremental savings, and that the Commission would find it unacceptable if a new program approach proposed to risk $100 against potential incremental savings of $1. We think that this risk/reward quantification would be more useful to guide future EE investment than the current methodology of applying the cumbersome taxonomy of retrofit classification (early retirement, replace on burnout, etc.) months or years after the actual investments have been made.

So we urge the staff to make an attempt to quantify the potential risks and rewards of moving to an existing conditions baseline, starting with the "Proposed Baseline Framework," (WP at 17). Using the information it has <u>in hand</u> (not the results of a year or two of more consultant studies), what does the staff think are the potential rewards (incremental savings) from, for example, starting a "Metered/Pay for Performance" program with an existing conditions baseline, and what are the risks (potential additional free riders)? This analysis must produce actual, quantified estimates, not descriptions.

We think this would make a significant improvement in the Commission's processes, because it advances the method for analyzing programs from its current focus on theory and program models to a focus on quantifiable results. And it would enable the Commission to move to a more nimble and (we think) more sound portfolio strategy, in which it is able to stratify risk/reward the way other portfolio managers do. So, for example, the Commission could decide that a $300 million IOU program portfolio should be stratified into low, medium and high risk, and that the IOU should be ordered to invest a certain percentage (*e.g.,* 10%) or a certain absolute dollar amount (*e.g.,* $30 million) in high risk, high reward programs. All stakeholders would know this in advance, and the IOU would not be penalized if these investments did not work out. Rather, the Commission would, without recrimination, simply move the high-risk funding allocation to another Program Administrator (PA).

The IOU could, of course, decline the assignment, telling the Commission it is not interested in managing high-risk investments, in much the same way that a bond fund manager like PIMCO tells CalPERS that it is not interested in managing high risk/high return venture fund or timber land investments. And then the Commission might look for an alternative PA that is comfortable managing high-risk investments, and used to a more harsh, results-oriented environment, both from the Commission and toward its program implementers. We think this would make the Commission's job easier, because if the high-risk PA is not making its numbers, it gets replaced rather than shoved into the current limbo of *post-hoc* evaluations.

5. The White Paper makes a preemptory, unsupported claim about a significant sector of the portfolio -- upstream and midstream rebate programs – which the Commission should reject.

"Since the customer that purchases equipment through these programs has already decided to replace their old equipment, the program induced savings are limited to the difference between the options of equipment available for purchase. " (WP, page 22) This, too, is simply asserted, with no evidence or study adduced to support the claim that customers who use these programs have made an investment decision apart from the program. Lower retail prices from upstream/midstream measures can induce a customer to purchase a new piece of equipment when an existing, less efficient piece of equipment is functioning well.   (The White Paper recommends that savings estimates for finance programs be based on existing conditions baseline. [WP, page 21] Following the White Paper's recommendation, a measure in an upstream/midstream program would use a code baseline, but the same measure acquired through a financing program would use an existing conditions baseline.)

6. NAESCO urges the the Commission to implement the broadest application of AB802 to the utilities' EE portfolio, including industrial buildings and processes.

Most Industrial buildings and processes have large EE opportunities that are well suited to NMEC approaches, including IPMVP. We respectfully suggest that the concept of Industrial Standard Practice (ISP) should be revisited to allow programs to capture all energy savings opportunities, many of which are currently stranded, rather than restricting very cost-effective industrial projects from participating in incentive programs. Today, customers, implementers, and program administrators can wait for more than a year for the ED and its consultants to determine the Industrial Standard Practice (ISP) baseline. We suggest that if it takes a year of research to determine, it is not a "standard practice."

Conclusion

NAESCO respectfully suggests to the Commission that since the January AB 802 implementation workshops, the staff and the other stakeholders have consumed four of the legislatively-allotted seven months, and we are no closer to having a workable implementation plan for September 1. We believe, for the reasons outlined above, that the White Paper is too flawed in its present form for the Commission to use as the basis for its implementation of AB 802, and we urge the Commission to instead direct the ED to proceed as follows:

- Prioritize the EE programs in order of the size of their current and projected (under AB 802) contributions to California's EE and GHG goals;

- Separate the programs into those that produce significant savings and can be easily adapted to the Net Metered Energy Consumption (NMEC) requirements of AB 802 with little or no R&D work on M&V (*e.g.,* MUSH and Industrial), from those programs that may require moderate R&D (*e.g.,* single family residential), from those programs that may require extensive R&D (*e.g.,* behavioral); and,
- Develop a simple, quantitative risk/reward analysis tool that the Commission and the PAs can use to rank programs and understand the level of risk in the legislatively-mandated new portfolio approach.

NAESCO is ready to participate in this process, and we look forward to working with all of the other stakeholders to launch the new program approach on September 1.

Respectfully submitted by,

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