BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) For Approval of Its 2012-2014 California Alternate Rates for Energy (CARE) and Energy Savings Assistance Programs and Budgets	))))	A. 11-05-017 (Filed May 16, 2011)
And Related Matters	)))	A. 11-05-018 A. 11-05-019 A. 11-05-020

INITIAL BRIEF OF THE NATIONAL CONSUMER LAW CENTER, CALIFORNIA HOUSING PARTNERSHIP CORPORATION AND NATIONAL HOUSING LAW PROJECT

Submitted by:

Charles Harak, Esq.
National Consumer Law Center Inc.
7 Winthrop Square, 4th floor
Boston, MA 02110
617 542-8010 (ph)
617 542-8028 (fax)
charak@nclc.org

Ross Nakasone, Esq.
California Housing Partnership Corporation
369 Pine Street, Suite 300
San Francisco, CA 94104
415 433-6804 x310 (ph)
415 433-6805 (fax)
rnakasone@chpc.net

Kent Qian and James R. Grow
National Housing Law Project
703 Market St., Ste. 2000
San Francisco, CA 94103
415 546-7000 x3112 (ph)
415 546-7007 (fax)
kqian@nhlp.org

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SUMMARY OF RECOMMENDATIONS

1. The non-cash value of housing subsidies offered to subsidized housing tenants should not be counted as income. In brief, we urge this because: (a) for certain housing programs, such as public housing, the value of that subsidy cannot even be calculated, (b) in no housing program is the subsidy provided in the form of cash, so that the household cannot "spend" its housing subsidy on energy needs, food, or other basic necessities; and (c) requiring the documentation of housing subsidies would prevent many otherwise eligible participants from accessing ESAP.

2. The Commission should allow for "expedited enrollment" of buildings that the Department of Housing and Urban Development ("HUD") has determined have at least 80 percent of units with income-eligible households. This will increase the number of income-eligible multifamily tenants served by ESAP while establishing a building-level approach to enrollment that reduces administrative expense.

3. ESAP should adopt a "single point of contact" for multifamily buildings and offer fully-qualified "expediters" that assist owners and tenants in affordable multifamily housing in achieving deep energy savings, by helping them fully access the myriad of existing energy efficiency services.

4. The Commission should lift the prohibition, articulated in D. 08-11-031, p. 31, that "no furnace repair and replacement or hot water repair and replacement work shall occur in violation of our holding in D. 07-12-051 that heating and water heating in rented housing are the responsibility of the landlord." While NCLC/CHPC/NHLP request that this prohibition be lifted, we are <u>not</u> asking that heat and hot water measures be routinely allowed in all such properties, nor provided for free if those services are billed through an owner's meter.

I. INTRODUCTION

On May 16, 2011, the four major investor-owned utilities ("IOUs") – Pacific Gas & Electric Company ("PG&E"), Southern California Gas Company ("SCG"), San Diego Gas & Electric Company ("SDG&E"), and Southern California Edison Company ("SCE") – filed applications for approval of their three-year Energy Savings Assistance Program ("ESAP") and California Alternate Rates for Energy ("CARE") programs and budgets. The four IOUs plan to spend a total of just under $1 billion for their ESA programs and approximately $3.7 billion on CARE, including both the subsidy costs for the CARE discounts offered and administration of the CARE program. These programs will provide incalculable benefits to low-income households by making energy prices more affordable (under CARE) and by assisting low-income households in reducing the amount of energy they need to comfortably live in their homes (under ESAP).

All Californians benefit as well from these programs. Through ESAP, the demand for both electricity and natural gas is greatly reduced, thus reducing carbon emissions that contribute significantly to climate change. Under CARE, millions of households find their energy bills more affordable, thus reducing the number of terminations and the number of households who might be forced to leave their homes due to lack of utility service. This reduces the need for social services that would be provided to families who would otherwise be homeless or living without heat, lights, hot water, or air conditioning.

The National Consumer Law Center ("NCLC"), California Housing Partnership Corporation ("CHPC") and National Housing Law Project ("NHLP") intervened in the consolidated ESAP/CARE dockets to advocate for changes in the design of ESAP that

would provide easier and more equitable access to ESAP for income-qualifying tenants living in multifamily rental buildings as well as lead to deeper savings in those buildings through an audit-based, whole building approach.

II. ESAP RULES REGARDING SERVICES PROVIDED TO MULTIFAMILY BUILDINGS SHOULD BE REVISED IN ORDER TO HELP ACHIEVE THE STATE'S ENERGY EFFICIENCY, CLIMATE CHANGE AND LOW-INCOME PUBLIC POLICY GOALS

The state of California is widely seen as a national leader in promoting investments in energy efficiency. In particular, the energy efficiency programs that the IOUs administer are often held up as models for other states to emulate.[1] By statute, the Public Utilities Commission is required to "identify all potentially achievable cost-effective electricity efficiency savings and establish efficiency targets" for electric utilities. Pub. Util. Code § 454.55. State law imposes similar obligations to create energy efficiency savings goals for gas companies.[2] Moreover, California arguably has the most ambitious plans in the country to mitigate the carbon emissions that are primary contributors to climate change.[3]

In the residential low-income sector, the state's IOUs also are required "to perform home weatherization services for low-income customers" in order to "reduc[e]

[1] For a number of years, California's overall energy efficiency programs and policies were rated #1 in the country by the American Council for an Energy-Efficient Economy ("ACEEE") in its annual "State Energy Efficiency Scorecard," which rates six categories of energy efficiency policies (e.g., "Utility and Public Benefits Fund Efficiency Programs and Policies;" "Transportation Sector;" "Building Energy Code"; etc.). In its most recent October 2011 scorecard, ACEEE rated California #2 in the country based on its total score in these six categories. In the "Utility and Public Benefits Fund" category, California received 17.5 out of a maximum of 20 points.

[2] Energy-efficiency requirements are imposed upon gas companies by Pub. Util. Code § 454.56 ("(a) The commission . . . shall identify all potentially achievable cost-effective natural gas efficiency savings and establish efficiency targets for the gas corporation to achieve. (b) A gas corporation shall first meet its unmet resource needs through all available natural gas efficiency and demand reduction resources that are cost effective, reliable, and feasible."). *See, also,* Pub. Util. Code § 454.5(b)(9)(c) [requiring electric company procurement plans to that the company will "first meet its unmet resource needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible."].

[3] Global Warming Solutions Act of 2008 (AB 32), Statutes of 2006, Chapter 488.

the hardships facing low-income households." Pub. Util. Code § 2790. As noted above, the four major IOUs plan to expend approximately $1 billion over the 2012-2014 period to carry out the goals of § 2790 and also intend by 2020 to provide all income-eligible customers with the opportunity to participate in ESAP.

While this docket in a narrow sense addresses only the applications of the IOUs for approval of their 2012–2014 CARE and ESAP budgets and programs, the ESAP portions of those applications must be seen in light of California's overall body of laws and policies promoting more efficient use of energy.[4] Moreover, the state's energy efficiency programs must be seen as just one tool – a very powerful and important tool – in attaining the state's carbon reduction goals so that the impacts of climate change may be mitigated. There is no question but that California is fully committed to aggressive energy efficiency goals:[5]

> In October 2007, the California Public Utilities Commission (CPUC) created a framework to *make energy efficiency a way of life in California* by refocusing programs on achieving long-term savings through structural changes in the way Californians use energy.[6]

In fact, "energy efficiency is California's top priority resource."[7]

However, the state's energy efficiency programs currently face two major challenges. First, after years of running successful programs, the utility companies have

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[4] Even within ESAP itself, the Commission has noted that the "program must evolve into a resource program that garners significant energy savings in our state while providing an improved quality of ,life for California's low income population." D. 08-11-031 (Nov. 10, 2008), p. 2. While balancing these sometimes competing policies of low income assistance and energy assistance can be challenging at times, there is no question but that achieving energy savings is a high-priority goal for ESAP.

[5] In 2009, the Legislature made even clearer its commitment to having the state aggressively pursue energy efficiency when it adopted Statutes of 2009, Chapter 470 (AB 758). In Chapter 470, § 1, the Legislature formally "recognize[d] . . (1) The significant energy savings and greenhouse gas emission reductions inherent in the state's existing residential and nonresidential building stock [and] (2) The need to establish a comprehensive energy efficiency program to capture those reductions."

[6] California Energy Efficiency Strategic Plan, January 2011 Update, p. 1.

[7] *Id.* Also note that California's Energy Efficiency Strategic Plan – January 2011 Update, p. 11sets a goal of reducing household energy consumption 20% by 2015, and 40% by 2020.

picked much of the lower-hanging fruit and now need to serve the harder-to-reach customers as well as achieve deeper savings in each building they serve. This latter point was made forcefully by Commissioner Ferron in a recent Ruling and Scoping Memo in Rulemaking 09-11-014. This Ruling noted the:

> intent . . . to begin a transition away from programs that offer only temporary and shallow energy savings – such as incentives for basic compact florescent light bulbs (CFLs) – and toward deeper retrofits, EE financing, [and] reduction in the number of EE programs . . . .[8]

While there are important distinctions between the so-called "general energy program" being reviewed in R. 09-11-014 and ESAP – notably, that the latter provides its services at no cost to eligible households and thus carries out the statutory goal of "reducing the hardships facing low-income households"[9], in addition to achieving energy efficiency goals – NCLC/CHPC/NHLP urge the Commission to see the present ESAP cases as an opportunity to move the program in the direction of "deeper retrofits"[10] and program integration, which also will have the effect of providing greater assistance to eligible low-income households. This would be entirely consistent with the Commission's prior decision approving the IOUs' three-year ESAP and CARE applications:

> [T]he low income programs can no longer operate with a business-as-usual approach. As we state in our recently adopted *California Long-Term Energy Efficiency State Plan*, the LIEE [now, ESA] program must evolve into a resource program that garners significant energy savings in our state while providing an improved quality of life for California's low income population.[11]

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[8] R. 09-11-014, Assigned Commissioner's Ruling and Scoping Memo Regarding 2013-2014 Bridge Portfolio and Post-Bridge Planning, Phase IV (issued Oct. 25, 2011) ("Oct. 25, 2011 Ruling"), p. 1.
[9] Pub. Util. Code § 2790.
[10] As Commissioner Ferron's Oct. 25 Ruling elsewhere noted (p. 5 – 6), "We are not achieving significant retrofits either in the commercial or residential sectors, despite the fact that deep retrofits represent a significant source of untapped energy savings potential and are consistent with the goals set forth in the Energy Efficiency Strategic Plan."
[11] D. 08-11-031, p. 2.

Second, "passage of the California Global Warming Solutions Act of 2006 (Assembly Bill 32) has amplified the need for intensive energy efficiency efforts across California."[12] The Global Warming Solutions Act ("GWSA") has raised the bar on what IOUs must achieve. NCLC/CHPC/NHLP intervened in this docket in order to focus on a specific sector of buildings in the low-income sector in which deeper, significant energy savings can be achieved – multifamily rental housing – and to identify obstacles that must be overcome to achieve those savings. Existing policies make it very difficult to achieve deeper energy savings in multifamily rental buildings because various energy savings measured are prohibited – e.g., heat- or hot-water related measures, if the usage for that equipment flows through an owner's meter, rather than a tenant's. Other policies act as administrative barriers that unduly slow down the process by which multifamily properties are served, or which deter tenants or owners from even applying, or which unfairly exclude certain program applicants – e.g., policies such as counting the non-cash value of housing subsidies as income; failing to allow for expedited enrollment of buildings that the federal government and state agency have identified as income-eligible using substantially similar criteria to ESAP's; and the existence of separate programs that are not well-coordinated so that many owners and tenants of multifamily buildings simply will not apply.[13]

[12] California Energy Efficiency Strategic Plan, January 2011 Update, p. 3.

[13] While the recommendations that NCLC/CHPC/NHLP make in this case are based on the need to overcome the barriers just enumerated so that ESAP can reach many more multifamily buildings and achieve deeper savings in each building served – and are not predicated on an assumption that these buildings are underserved by ESAP – there is in fact evidence that this sector is indeed underserved. For example, in response to data request NCLC-SCE 1-7(b), SCE itself stated that only "23% of treated households are multifamily" whereas "SCE estimates that 29% of its ESA eligible households are multifamily." Moreover, the IOUs do not directly track the number of ESAP-eligible units broken down by owner versus renter or housing type but instead have "developed estimates of customer *eligibility* for these categories based on historical program *installation* data." (PG&E response to CHPC data request 1-2a, discussed in the Testimony of Matt Schwartz on Behalf of NCLC/CHPC/NHLP, p. MS-9; *see also* SCE

NCLC/CHPC/NHLP are well aware that the statutes and policies they cite – the GWSA and Public Utility Code mandates to achieve all cost-effective energy efficiency – call out for potentially large-scale changes in ESAP, yet that the proposals we make focus just on the affordable multifamily rental housing sector. But there is good reason for this, as our expertise and knowledge lie precisely in the area of affordable multifamily rental housing. We respectfully request that the Commission carefully and fully consider the evidence and arguments we will offer in this brief regarding needed changes to ESAP, and that the Commission ultimately approve the following proposals:

1. The non-cash value of housing subsidies offered to subsidized housing tenants should not be counted as income. In brief, we urge this because: (a) for certain housing programs, such as public housing, the value of that subsidy cannot even be calculated, a point that even some of the IOUs concede in answers to discovery, (b) in no housing program is the subsidy provided in the form of cash, so that the household cannot "spend" its housing subsidy on energy needs, food, or other basic necessities; and (c) requiring the documentation of housing subsidies would prevent many otherwise eligible participants from accessing ESAP.

2. The Commission should allow for "expedited enrollment" of buildings that the Department of Housing and Urban Development ("HUD") has determined have at least 80 percent of units with income-eligible households. This models the federal Weatherization Assistance Program ("WAP") approach to expedited enrollment, which

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response to NCLC-SCE 1-7(a)["SCE does not have available data on the number of income-eligible multifamily properties and the number of properties served . . ."]). Also worth noting is a submission made by PG&E in an *ex parte* meeting with advisor to Comm. Simon, "Multifamily Sector Update – January 24, 2012." Slide 9 of that presentation lists "43%" for the "Percent of Low Income Households" living in multifamily buildings of 5 or more units. Yet from 2007 to 2010, "only 24% [of ESAP treated homes] were multifamily homes." Schwartz Testimony, p. MS-7 – 8.

has successfully eliminated the unnecessary time and expense spent collecting income on a tenant-by-tenant basis in those buildings. This will increase the number of income-eligible multifamily tenants served by ESAP while establishing a building-level approach to enrollment that reduces administrative expense, which is why the California Department of Community Services and Development ("CSD") adopted this approach for multifamily rental housing in 2010.[14]

3. ESAP should adopt a "single point of contact" for multifamily buildings and offer fully-qualified "expediters" that assist owners and tenants in affordable multifamily housing in achieving deep energy savings, by helping them fully access the myriad of existing energy efficiency services. To that end, expediters can eliminate the need to apply separately for ESAP and the general energy efficiency program, and facilitate a whole-building, performance-based approach to reducing energy demand in affordable multifamily rental housing.

4. The Commission should lift the prohibition, articulated in D. 08-11-031, p. 31, that "no furnace repair and replacement or hot water repair and replacement work shall occur in violation of our holding in D. 07-12-051 that heating and water heating in rented housing are the responsibility of the landlord." While NCLC/CHPC/NHLP request that this prohibition be lifted, we are <u>not</u> asking that heat and hot water measures be routinely allowed in all such properties, nor provided for free if those services are billed through an owner's meter. Rather, we propose that common area and common system measures in income-qualifying multifamily buildings be allowed when a high-quality energy audit shows that those investments will be cost-effective. We also propose

[14] *See* CSD's WAP program guidance "DOE WAP ARRA No. 13", available at http://www.csd.ca.gov/documents/Recovery%20Tab/CSD%20ARRA%20Guidance/Multi-Family%20Properties%20-%20Program%20Guidance%2013%20-%20Final%20100701.pdf

that the expediter (see #3, above) should make sure that all available free services under ESAP are provided to the building (for measures that are billed through tenant meters); that all general efficiency program rebates are made available at the same time (for measures billed through an owner meter); and that the expediter assist with the arrangement of financing for any portion not covered by the above.

Taken together, these recommendations will remove existing barriers that multifamily owners and tenants face, and ensure a true "whole building" approach that will result in deeper energy savings and more participation by owners and tenants of multifamily rental buildings.

III. THE NON-CASH VALUE OF HOUSING SUBSIDIES SHOULD NOT BE COUNTED AS INCOME

The non-cash value of housing subsidies offered to subsidized housing tenants should not be counted as income, as is currently required by the Statewide Low Income Energy Efficiency Program Policy and Procedures Manual, p. 10, Table 2-1. There are three reasons why: (a) for certain housing programs, such as public housing, the value of that subsidy cannot even be calculated, a point that even some of the IOUs concede in answers to discovery; (b) in no housing program is the subsidy provided in the form of cash; and (c) requiring the documentation of housing subsidies would prevent many otherwise eligible participants from accessing ESAP.

A. Overview of Federal Subsidized Housing Programs

While there are a number of federally-subsidized rental housing programs, the vast majority of federally subsidized tenants participate in the following programs: the public housing program, the project-based Section 8 program, HUD-subsidized mortgage programs for multifamily buildings, the Section 8 Housing Choice Voucher program, and

the Low Income Housing Tax Credit (LIHTC) program. Admission to each subsidized housing program is limited to low-income families: over 96 percent of Californians in HUD-subsidized housing earn less than 50 percent of the area median income.[15] In California, the average household income in HUD-subsidized housing programs is $15,400, with an average income per person of $6,700.

In each program the housing is made affordable by limiting the assisted family's rent burden. Table 1 summarizes the rent determination and subsidy mechanism for each of the major federal subsidized housing programs.

Table 1: Rent and Subsidy Mechanism, by Program

Housing Type	Tenant's Rent	Subsidy Mechanism
Public Housing	30 percent of family income	Through Annual Contribution Contract between HUD and local PHA
Project-based Section 8	30 percent of family income	Through Housing Assistance Payment Contract between HUD and assisted owner
HUD-subsidized multifamily properties (mortgage programs)	Rent is determined based on cost of running property at reduced interest rate	Through reduced interest rate on the mortgage and HUD-approved budget-based rents
Section 8 Housing Choice Voucher Program	30 percent of family income or more[16]	Through Housing Assistance Payments Contract between PHA and assisted owner
Low Income Housing Tax Credit	Set based on a percentage of Area Median Income	Through tax credits to the property's developers/investors

Source: National Housing Law Project, *HUD Housing Programs: Tenants Rights § 3.2 (3d. ed. 2004 and 2010 Supp).*; Testimony of Matt Schwartz, p. MS-4 to MS-6)

A household residing in HUD-assisted or LIHTC housing never receives a direct payment regardless of the housing type; the subsidy instead flows from HUD to the

[15] Income data is gathered from HUD, "A Picture of Subsidized Households – 2008," the last year that comprehensive income data is available on a state and local level. *Available at* http://www.huduser.org/portal/picture2008/index.html.

[16] In the Housing Choice Voucher Program, the tenant's rent may in cases exceed 30 percent of income if the rent for the apartment exceeds the "payment standard" set by the local public housing authority.

subsidized housing owner, or via tax credits to the owner. Testimony of Wayne Waite re: Counting of Housing Subsidies as Income on Behalf of NCLC/CHPC/NHLP, p. WW A-4 ("Waite/Housing Subsidies at WW A-x").[17] In public housing units, which are owned and operated by local public housing authorities (PHAs), HUD subsidizes operating and capital expenses through an Annual Contribution Contract (ACC) with the PHA. For properties subsidized under the project-based Section 8 program or the Section 8 Housing Choice Voucher program, a private landlord receives assistance either from HUD directly or from the local PHA through a Housing Assistance Payments (HAP) Contract. The LIHTC program awards federal housing tax credits to the property's developers, who sell them to corporate investors, with rents being restricted to affordable levels for a specified period of years. HUD-subsidized multifamily mortgage properties (e.g., in the Section 221(d)(3) and 236 programs) receive a federal subsidy through reduced interest rates on the mortgage. Affordability in these programs is assured through federally regulated cost-based rents.

B. Federal Housing Subsidy Is Not Income Because No Cash is Given to the Tenant

As a non-cash form of assistance, housing subsidy should be excluded from the calculation of income. The tenant receives the benefit only "in kind" by the rent restriction imposed by each program. As HUD official Wayne Waite testified, "A household living in HUD-subsidized housing does not receive any direct assistance from HUD." Waite/Housing Subsidies, p. WW A-4. For properties subsidized under the project-based Section 8 program or the Section 8 housing choice voucher program, a

[17] Mr. Waite is "HUD's Manager for Field Energy and Climate Operation." He has "worked on various energy issues and projects with staff at the California Energy Commission, California Public Utilities Commission, public and investor-owned utilities, and other organizations directly involved with the delivery of energy efficiency policies and programs." Waite/Housing Subsidies, p. WW A-2.

private landlord receives assistance either directly from HUD or from the local public housing authority through a Housing Assistance Payment (HAP) Contract. *Id.* In the LIHTC program, the subsidy is in the form of a tax break to the developers, and in HUD-assisted multifamily mortgage properties, the assistance is primarily in the form of interest rate subsidies, all as more fully detailed in section A, *supra*.

Because no cash is paid to the assisted household, the family cannot spend its housing subsidy on energy needs, food, or basic necessities. Indeed, the income definition in General Order 153, "Procedures for Administration of the Moore Universal Telephone Service Act," makes precisely this distinction between cash and non-cash income.[18] GO 153 classifies all "cash payments" and "revenues" as income. The only non-cash income that is counted must be "employment-related." Because a federal housing subsidy is not employment-related, it should not be counted in household income for ESAP.

Excluding housing subsidies from income would also bring ESAP's income determinations into alignment with Lifeline. Currently the California Lifeline Telephone Program does not count housing subsidies in income, as households receiving Federal Housing Assistance or Section 8 are categorically eligible for Lifeline. D.08-11-031, p. 30 ("customers can be categorically eligible for Lifeline by proving enrollment in . . . Federal Housing Assistance/Section 8"). This position would also be consistent with California law. *Cf. Sabi v. Sterling*, 183 Cal. App. 4th 916, 927 (2010) (holding that a landlord's refusal to accept Section 8 voucher is not source of income discrimination

[18] General Order 153, § 2.1.46, defines total household income as "All *revenues*, from all household members, from whatever source derived, whether taxable or non-taxable, including, but not limited to: wages, salaries, interest, dividends, spousal support and child support, grants, gifts, allowances, stipends, public assistance *payments*, social security and pensions, rental income, income from self-employment and *cash payments* from other sources, and all employment-related, non-cash income." (Emphasis added).

because the assistance is paid to the landlord and not the tenant; "a voucher is not income and is not paid to anyone").

C. The Value of Housing Subsidies is Difficult, Even Impossible, to Count

Any attempt to consistently and fairly include the value of housing subsidies as income would also create a logistical nightmare, as it is difficult, even impossible, to quantify the value of housing subsidies on a per-tenant basis. If housing subsidies were provided to tenants in the form of cash, it would be easy to determine the value of the subsidy. But as just explained above, no tenants receive housing subsidies as cash. In theory, the value of housing subsidies could perhaps be determined as the difference between "market rent" for each unit and tenant's share of the rent (the rent the tenant actually pays to the subsidized owner). However, this is not practical or even possible for almost any of the housing subsidy programs. With respect to public housing, HUD-subsidized multifamily mortgage properties, and LIHTC properties, there is no market rent or any other way to ascertain what the subsidy is worth on an annual basis, per housing unit. In each of these programs, subsidy is provided to the owner in a manner that is not tied to any particular unit or tenant.[19] In the public housing program (and in highly simplified terms), HUD makes up much of the difference between rents collected and total operating costs through an Annual Contributions Contract.[20] In HUD-subsidized multifamily mortgage properties, the owner initially received a subsidy in the form of a mortgage with a below-market interest rate or interest subsidy reduction reserve, making it impossible to calculate, years later, the benefit that individual tenants

[19] As Mr. Waite noted in his testimony, "In some cases, the subsidy is not tied to specific units but to the building as a whole, making a calculation of unit-specific subsidy impossible." Waite/Housing Subsidies, p. WW A-5, n. 6.
[20] See Table 1, above.

may receive in any given year.[21] In the LIHTC program, the limited partner owner receives tax breaks in return for investing up-front capital. It is impossible to calculate the value of these tax breaks for individual tenant units on an annual basis.

With respect to project-based Section 8 program, the assisted owner informs the tenant how much the tenant must pay as rent, but generally does not provide the tenant with information about the actual market rent for the unit.[22] In the Section 8 Housing Choice Voucher program, the market rent may (or may not) be reflected in documents initially provided to the tenant, "but many tenants might not save this information as once they are housed they do not need to know the value of the subsidy." Waite/Housing Subsidies, p. WW A-5. Table 2 below illustrates the difficulties of determining the value of housing subsidies across programs.

Table 2: Value of Housing Subsidy, by Program

Subsidy Type	**Tenant's Rent Burden**	**Market Rent**	**Value of Housing Subsidies to Tenants**
Public Housing	30 percent of family income	Unknown	Unknown
Project-based Section 8	30 percent of family income	Contract rent (often not disclosed to tenant)	Contract rent minus tenant's rent burden
HUD-subsidized mortgage properties	Rent is based on cost of running property at reduced interest rate	Unknown (except for individual units that have a § 8 contract)	Unknown
Section 8 Housing Choice Voucher Program	30 percent of family income or more[23]	Determined at initial occupancy but not always updated or disclosed to tenant	Contract rent minus tenant's rent burden
Low Income Housing Tax	30% of Area Median Income	Unknown	Unknown

[21] See Table 1, above.
[22] *See* HUD Model Lease for Subsidized Programs, *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=90105a.doc.
[23] In the Housing Choice Voucher Program, the tenant's rent may in cases exceed 30 percent of income if the rent for the apartment exceeds the payment standard set by the local public housing authority.

Credit			

Source: National Housing Law Project, *HUD Housing Programs: Tenants Rights § 3.2 (3d. ed. 2004 and 2010 Supp)*

As HUD official Wayne Waite testified, "[a]dministratively this process could be very difficult to implement, especially when the tenant has no knowledge of the amount of the subsidy attributable to his or her unit." Waite/Housing Subsides, p. WW A-5. This difficulty has been borne out by the IOUs' varying responses to the question of how they count housing subsidies as income. Many responses are vague.[24] Others are circular.[25] Another response simply makes no sense in light of the fact that public housing tenants do not receive an award letter with a subsidy level.[26] Tellingly, despite data requests that specifically asked IOUs to produce relevant documentation, no utility provided an example of how a current ESAP participant's housing subsidy is calculated as income or how the value of housing subsidies is monetized in practice.

Moreover, because ESAP appears to be the only program to count housing subsidies as income, no model exists from any other program on how to quantify the value of housing subsidies. Some programs, such as the Supplemental Nutrition Assistance Program (SNAP or Food Stamps) and Supplemental Security Income (SSI), explicitly exclude the value of housing subsidies from income. 7 C.F.R. § 273.9(c)(1)(i)(E), (c)(1)(ii)(B) (SNAP); 42 U.S.C. § 1382a(b)(14) (SSI). NCLC/CHPC/NHLP could not find any assistance program that attempts to monetize the value of housing subsidies and then count that monetized value as income. Neither could

[24] See discovery responses to NCLC-PGE 3-1; NCLC-SCG 3-1; NCLC-SDG&E 3-1; NCLC-SCE 3-2.
[25] See NCLC-SD&GE 3-2(e) ("SDG&E considers public housing as providing cash or monetary assistance to the household only if there is a subsidy, stipend, payment, or any other form of income awarded to the tenant as defined in General Order 153.").
[26] NCLC-SDG&E 3-1 ("a public housing tenant's subsidy is valued by the amount specified in the award letter"); NCLC-SCG 3-1 ("The value of the housing subsidy is equal to the amount specified by the public housing tenant's supporting documentation provided, i.e. award letter.").

HUD official Wayne Waite identify any other program that counts the value of housing subsidies. As he testified, "Because housing subsidies are not assistance given directly to the tenant . . . the assistance programs I am familiar with do not value housing subsidies in income calculations. To my knowledge ESAP is the only program that counts the value of housing subsidies as income." Waite/Housing Subsidies, p. WW A-6.

D. Maintaining a Policy that Requires the Counting and Documentation of Housing Subsidies Will Exclude Otherwise Eligible Households and Lead to Arbitrary Results

Finally, the counting of housing subsidies, if implemented in full compliance with the Statewide Low Income Energy Program Policy and Procedures Manual, would inevitably exclude otherwise eligible families for the simple reason that they cannot document the value of their subsidies. Waite/Housing Subsidies, p. WW A-5. As Mr. Waite testified, "If the IOUs and tenants are required to document and place a value on housing subsidies, many tenants in federally-subsidized housing may simply be unable to do so as they are not given any documentation of the precise monetary value on their housing subsidies." *Id.* A policy that requires the counting and documenting of the value of subsidies would "prevent a large number of federally-subsidized tenants, many of them with extremely low income, from accessing the Commission's low income energy programs." *Id.*

Moreover, to the extent the utilities are directed by the Commission to count the value of housing subsidies as income, this will lead to arbitrary, irrational and unfair results. As the testimony of Wayne Waite establishes, it is impossible to calculate the value of housing subsidies for tenants living in public housing, HUD-subsidized multifamily properties receiving below-market interest rate mortgages, or LIHTC

properties. These tenants will arbitrarily be excluded from receiving ESAP assistance because they cannot possibly document, on a per-household basis, the value of the housing subsidies that their buildings or properties receive. Some Housing Choice Voucher tenants may be able to document the value of their housing subsidies and potentially receive ESAP services, if the housing authority provides that information to the tenant, but many more will not, again leading to highly arbitrary outcomes.

In deciding whether to revise the current policy requiring the counting of the value of housing subsidy, the Commission should carefully consider whether the effort required to determine the value of housing subsidy actually results in screening out significant numbers of households that have too much income to qualify for ESAP (putting aside all of the points raised above about the impossibility or impracticality of determining that value). As noted at the outset of this discussion, the overwhelming majority of assisted housing tenants are more than simply "poor;" they are desperately poor. Based on the most recent data available, the average household income of Californians living in HUD-subsidized housing programs is $15,400. Assuming household sizes of either 2 or 3 persons, the average household income of $15,400 is $16,000 to $21,000 below the limit of qualifying for ESAP.[27] For the overwhelming majority of assisted housing tenants, their incomes are so low that they would still qualify for ESAP even if the value of housing subsidy could be determined and counted as income.[28] NCLC/CHPC/NHLP are not suggesting that the value of housing subsidy

[27] According to the Statewide Low Income Energy Efficiency Program Policy and Procedures Manual, p. 10, Table 2-1 (Aug. 2010), the maximum gross income for a family of two is $31,300, and for a family of three the limit it is $36,800.

[28] As Wayne Waite testified, "using 2009 data, only 8% of tenant-based voucher tenants, 11% of project-based voucher/certificate tenants, and 6% of public housing tenants had incomes over $25,000," adding that an "income of $25,000 is only slightly more than one-half the income-eligibility limit for a household of four in ESAP." Testimony of Wayne Waite Re: Expedited Enrollment, p. WW B-6.

should be ignored simply because most assisted housing tenants are very poor. Rather, we are asking the Commission to consider, in weighing our request to change the current policy, the fact that very few assisted housing tenants would be disqualified even if it were easy to determine the value of housing subsidy for each and every tenant.

Several other parties support NCLC/CHPC/NHLP in urging the Commission not to require the counting of housing subsidies as income, including Green for All, Center for Accessible Technology, and the Natural Resources Defense Council.[29]

IV. THE COMMISSION SHOULD ADOPT AN EXPEDITED ENROLLMENT PROCESS FOR MULTIFAMILY RENTAL BUILDINGS

The Commission should 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.

While this would require changes to the ESA program, including conformity of the ESAP definition of income to that agreed to by DOE and HUD, it is an approach that has been well-tested by federal agencies and CSD, and would provide maximum assurance of income eligibility while creating administrative efficiencies by allowing enrollment to be done at the building level.

A. Building Level Eligibility and Enrollment Saves Time and Money

[29] *See* Schwartz Testimony, p. MS-11 (Green for All and Center for Accessible Technology support NCLC/CHPC/NHLP position on not counting housing subsidies); Reply Testimony of Alex Jackson on behalf of the Natural Resources Defense Council, p. 11 ("NRDC agrees that housing subsidies should not be considered a source of income under the ESA Program.").

While going "door-to-door" may be appropriate in determining the eligibility of a household in a single-family home or small multifamily building, a unit-by-unit approach to determine income eligibility for large multifamily buildings is unnecessarily burdensome, duplicative, and inefficient for those buildings that regularly collect tenant income information.

As noted by Wayne Waite, HUD's Manager for Field Energy and Climate Operations,

> It takes a great deal of time and effort to gather income verification documents from individual tenant households and then determine if their incomes are at or below 200% of poverty. Some low-income tenants may not be able or may refuse to produce that information for the IOU or its contractors/agents in a timely manner, which could result in a household or building not being considered ESAP-eligible…."

Testimony of Wayne Waite on Behalf of NCLC/CHPC/NHLP re: Expedited Enrollment ("Waite/Exp. Enrollment"), p. WW B-6.

Dan Levine's experience echoes this perspective. Mr. Levine is the Senior Vice President of Construction for the John Stewart Company (JSCO), a multifamily real estate financing, development, marketing, and management company with over 350 properties, both market rate and affordable, encompassing more than 20,000 residential units, home to over 65,000 California residents. At one of JSCO's properties, "a refrigerator exchange program that should have resulted in exchange of refrigerators at 56 units was reduced to less than one third due to the burdensome and eventually untenable interview and qualification process." Testimony of Dan Levine, p. DL-7.

Extracting personal information—such as income data—from tenants is not easy. Mr. Levine notes:

> Tenants are generally reluctant to respond to strangers knocking on their front doors and have limited tolerance for repeated intrusions into their homes. This is particularly true among seniors and disabled tenants who spend a majority of their day in their homes and may be worried that they are being exploited by outside parties.

Levine Testimony, p. DL-8.

While this process is unavoidable in some enrollment situations, many multifamily rental properties already collect income information from tenants, making the unit-by-unit approach unnecessarily burdensome, duplicative, and inefficient. "In instances when a multifamily rental building owner/manager already certifies the incomes and rents of tenants at a property level to a state and/or federal agency, making individual tenants provide proof of their income is duplicative and unnecessary." Levine Testimony, p. DL-7. This unit-by-unit barrier was also identified by the U.S. Environmental Protection Agency-sponsored multifamily subcommittee of the California Home Energy Retrofit Coordinating Committee (MF HERCC), which noted that requiring households to individually qualify and individually allow access to complete weatherization work "impedes participation by low-income properties." MF HERCC recommends "permitting households to be qualified for the program based on certified income records maintained by the property owner pursuant to state or federal regulations."[30]

By relying upon HUD's existing income data collection and verification capacity, ESAP can streamline its administrative process and lower enrollment costs, while reducing disturbances to tenants, avoiding tenants' hesitance to release income data to

[30] Multifamily Subcommittee of the California Home Energy Retrofit Coordinating Committee, "Improving California's Multifamily Buildings: Opportunities and Recommendations for Green Retrofit and Rehab Programs," (Apr. 11, 2011), p. 43, *available at* http://www.multifamilygreen.org/wp-content/uploads/2011/02/MF-HERCC_Multifamily- Program-Design_Final_04112022.pdf (accessed June 13, 2011).

people with whom they have had no prior contact, and, in turn, enrolling more income eligible households. This same income-verification barriers were addressed by DOE and CSD in the context of developing Multifamily Guidelines for the American Recovery and Reinvestment Act (ARRA) WAP.[31]

It is important to note that the Commission has already established multifamily building-level eligibility. Unlike the ESA program, the California Solar Initiative has addressed the challenge of unit-by-unit enrollment in low income multifamily rental buildings through the development of distinct approaches for both the single-family and multifamily housing sectors. The Multifamily Affordable Solar Housing (MASH) program eschews income-qualifying and enrolling individual rental households and instead adopted building level eligibility. As noted in NCLC/CHPC/NHLP's Response to "Administrative Law Judge's Ruling Seeking Comments Set No. 1"- Category 2 Responses, "MASH-eligible multifamily buildings include those that are financed with government assistance and subject to rent restrictions for lower income households. In contrast, ESAP currently provides no building-level eligibility and requires unit-by-unit eligibility."[32]

More recently, the Commission adopted building-level low income multifamily eligibility requirements in the California Solar Initiative-Thermal ("CSI-Thermal") Program. For the low-income solar water heating component of the CSI-Thermal program:

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[31] See 75 Fed. Reg. 3847 (Jan. 25, 2010) and 10 C.F.R. § 440.22.

[32] NCLC/NHLP/CHPC's Response to "Administrative Law Judge's Ruling Seeking Comments Set No. 1" -Category 2 Responses, p. 3. For the definition of "Low-income residential housing" see the California Public Utilities Commission California Solar Initiative Program Handbook,(Sept. 2011), p. 5, *available at* http://www.gosolarcalifornia .ca.gov/documents/CSI_HANDBOOK.PDF, which references Pub. Util. Code § 2852(a).

> [A] multifamily housing property must meet either the definition of low-income residential housing in Section 2861(e) or meet the terms of Section 2866(c)(2) by demonstrating that at least 50 percent of all units in the multifamily housing structure are occupied by ratepayers that are participating in a Commission-approved and supervised gas corporation LIEE program (now known as ESAP) administered by PG&E, SoCalGas or SDG&E.[33]

In summary, the expedited multifamily enrollment process proposed by NCLC/CHPC/NHLP would eliminate the need to qualify households unit-by-unit for some multifamily rental housing.[34] Relying upon a list of buildings similar to the federal Weatherization Assistance Program's list of eligible multifamily rental buildings would reduce administrative costs, facilitate the enrollment of more income-eligible households and establish building-level eligibility necessary for a whole-building performance based approach.

B. CSD Adopted an Expedited Multifamily Enrollment Process for ARRA WAP Which Demonstrates the Feasibility of Doing So

Following the passage of ARRA in 2009, HUD and DOE established a process to enroll low income multifamily households more quickly into WAP. In establishing this process, HUD and DOE took three key steps:[35] 1) The agencies agreed that HUD's income-verification process is sufficiently rigorous for DOE to use HUD data (in lieu of the door-to-door process) to verify that a household's income is at or below 200 percent of the federal poverty guidelines; 2) The agencies determined that WAP services can be provided without obtaining individual tenant income documentation for buildings with at least 66 percent of units with household incomes at or below 200 percent of the federal

[33] D.11-10-015 (Oct. 13, 2011), p. 14.
[34] NCLC/CHPC/NHLP anticipate that some parties will object to the proposal because not all multifamily buildings will be able to avail themselves of expedited enrollment. Such an argument would seek to maintain administrative inefficiency for the mere sake of inefficiency, as those living in multifamily buildings which may not be able to use expedited enrollment gain nothing by thwarting the NCLC/CHPC/NHLP proposal, and all ratepayers lose to the extent that failing to adopt expedited enrollment causes IOUS to incur needless administrative expense.
[35] Testimony of Wayne Waite re: Expedited Enrollment, p. WWB-5.

poverty level (determined using the HUD income data);[36] and 3) They established a list of properties that meet the above criteria (buildings with at least 66 percent of tenants with incomes at or below 200 percent of the federal poverty guidelines).[37]

The HUD income verification process is extremely rigorous. HUD uses an "Enterprise Income Verification System that accesses Social Security Administration data bases; quarterly wage reports; quarterly unemployment data; and other sources"[38] to provide a more comprehensive assessment of a household's income than can be determined by ESAP service providers asking the household to self-report their income. DOE and HUD established this process to help "[lower] barriers that have historically existed to the use of weatherization funds in multifamily housing." According to Wayne Waite, the list of WAP-eligible buildings is "being widely used by states to more easily serve income-eligible multifamily buildings." Waite/Exp. Enrollment, p. WW B-5. The list of WAP-eligible buildings is currently in use and can be found at: http://www1.eere.energy.gov/wip/multifamily_guidance.html.

C. The Commission Should Establish a List of Buildings Meeting ESAP's 80% Rule Using HUD's Certified Income Data

While the existing list of WAP-eligible buildings includes those with at least 66 percent of income-eligible households, the expedited multifamily enrollment process now proposed by NCLC/CHPC/NHLP would use the same HUD data, leveraging HUD's

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[36] 75 Fed. Reg. 3848-3849 (Jan. 25, 2010).

[37] *See* "Housing and Urban Development Multifamily Properties Eligible for Weatherization Assistance," *available at* http://www1.eere.energy.gov/wip/multifamily_guidance.html (accessed January 29, 2012), which links to the March 2, 2010 DOE Weatherization Program notice 10-15. *See, also,* CSD's conforming guidance, DOE WA ARRA No. 13, "Multi-Family Property – Affordable Housing Weatherization Policies and Procedures." *available at* http://www.csd.ca.gov/documents/Recovery%20Tab/CSD%20ARRA %20Guidance/Multi-Family%20Properties%20-%20Program%20Guidance%2013%20-%20Final%20100701.pdf (accessed January 29, 2012).

[38] Waite/Exp. Enrollment Testimony, p. WW B-7.

rigorous income verification, to develop a *new* list of buildings meeting an 80 percent threshold of income-eligible households. This could conform to the existing 80% rule in the Statewide Low Income Energy Efficiency Program Policy and Procedures Manual Section 2.2.6.[39] The list of buildings with at least 80 percent of units with income-eligible households established by HUD would relieve providers of the administrative burden of going unit-by-unit to "review, copy and store income documentation for all households used to qualify an apartment building,"[40] and would rely instead on HUD's income verification process which accesses robust income data not commonly accessed by ESAP service providers.

The Commission should establish an expedited multifamily enrollment process using a list that is similar to the list of WAP-eligible buildings, but that includes only buildings with at least 80 percent of units occupied by households with incomes at or below 200 percent of the federal poverty guidelines. As noted in the testimony from Wayne Waite:

> HUD could be requested by the Commission or other authorized entity to develop a list of properties from its household income records to identify properties in which at least 80% of the tenants have incomes at or below 200% of FPL. This process would be basically the same as the process used for DOE's Weatherization program, only this new list would align with the current ESAP

[39] In response to testimony and comments from other parties (including Southern California Edison's Rebuttal Testimony: "There is general consensus among the IOUs that the funding element of the 80/20 rule, which allows funding for 100% of the Units, should not be applicable with a 66/34 rule," p. 17), NCLC/CHPC/NHLP have modified their earlier position advocating the use of the existing list of WAP-eligible buildings, which includes buildings with at least 66 percent of units having income-eligible households. (*Compare* Schwartz Testimony MS-16 and NCLC/NHLP/CHPC's Response to ALJ Kim's Ruling Seeking Comments Set No. 1—Category 1, p. 7). NCLC/CHPC/NHLP now support use of a list of buildings with at least 80 percent of income-eligible households. NCLC/CHPC/NHLP urge that this approach be adopted in the final decision tentatively scheduled for April 2012. However, should the Commission reserve this issue for further review beyond the final decision, we would then recommend the consideration of other expedited multifamily enrollment approaches, including use of the WAP-eligible list that includes buildings in which 66% or more of the tenants have incomes at or below 200% of poverty, and a building-by-building approach that would qualify individual buildings if the owner can demonstrate that a sufficient percentage of the tenants are ESAP-eligible.

[40] Statewide Low Income Energy Efficiency Program Policy and Procedures Manual, p. 18, Aug. 2010.

> trigger for "qualifying multifamily complexes," Policy and Procedures Manual section 2.2.6 (August 2010 edition).

Waite/Exp. Enrollment, p. WW B-10. This list of buildings would still rely on the rigorousness of HUD's income verification process. However, it would be tailored to meet California's existing program rule that allows all tenants in buildings with at least 80 percent of units occupied by income-qualified households to receive existing ESAP services.

The recommendation that the Commission should establish an expedited multifamily enrollment process is not only supported by NCLC/NHLP/CHPC and by the MF HERCC report noted above, it is also supported by several other parties – Green for All, Center for Accessible Technology, National Asian American Coalition, Latino Business Change of Greater Los Angeles and the Black Economic Council.[41] In addition, PG&E "welcomes opportunities to streamline paperwork"[42] and offers qualified support for the use of HUD's income verification process noting that:

> PG&E is not opposed to exploring the specifics of HUD eligibility qualifications and would recommend accepting them if they are at or more stringent than the guidelines and criteria adopted by the Commission for the ESA Program.

PG&E Reply Testimony, p. 27.

NCLC/CHPC/NHLP's expedited enrollment proposal is not intended to be the sole mechanism through which multifamily rental buildings can access ESAP and should not be construed as a proposal to in any way limit the "traditional" method of qualifying and serving individual units in multifamily buildings. In addition, multifamily rental properties with at least 80 percent of units with household incomes at or below 200 percent of the federal poverty guidelines (but not already on the list of WAP-eligible

[41] Schwartz Testimony, p. MS-11.
[42] PG&E Reply Testimony, p. 28.

properties) should be eligible for the whole-building approaches detailed in other parts of this brief.

D. The Commission Should Facilitate Greater Coordination Between Programs by Joining CSD and DOE in Relying on HUD's Certified Income Data and Definition of Income

In using of the list of WAP-eligible buildings, CSD and DOE have chosen to leverage HUD's strict income determination rules as a way to minimize administrative time and expense documenting the income of WAP applicants. If the Commission agrees to use a list of buildings that relies upon HUD's income data – but one that is tailored to include California buildings that are at least 80% occupied by income-qualified households – the Commission should require that appropriate changes be made to the Policy and Procedures Manual to conform with HUD's definition of income eligibility, as described above.

V. ESAP SHOULD TAKE AN AUDIT-BASED "WHOLE-BUILDING" APPROACH TO MULTIFAMILY PROPERTIES IN WHICH NO MEASURES ARE ARBITRARILY EXCLUDED AND SHOULD FACILITATE DEEPER SAVINGS FOR BOTH TENANT- AND LANDLORD-METERED LOADS

A. Many Multifamily Stakeholders See the Need for a New Approach to Serving Multifamily Buildings; the Existing Program Design Is Not Reaching the Potential for Deep Energy Savings

> "Historically, owners and managers of multi-family properties have been less responsive to energy efficiency efforts than other residential customers. As one of California's largest segments, *this unique market warrants additional attention and effort* needed to motivate property owners and managers to actively participate in energy efficiency programs. *Energy efficiency efforts for this segment must deal with both owners/managers of multi-family buildings and tenants.*

> *A significant challenge to overcome is that the Energy Savings Assistance Program is targeted at the low-income household, and not at the building*."[43]

This quote from SCE's Application in A. 11-05-017 succinctly encapsulates most – although not all – of the barriers that ESAP faces in trying to adequately reach and serve multifamily buildings. First, owners and managers "have been less responsive" to efficiency programs "than other residential customers"[44] due to a number of barriers discussed in §§ V. B – D, *infra.* Second, the current design of ESAP and the general energy efficiency program makes it hard to serve and "deal with both owners/managers of multi-family buildings and tenants." Third, that same disjuncture between ESAP and the general energy efficiency program creates a "significant challenge to overcome" if the IOU's energy efficiency programs are to serve the whole "building," as they must if California is to reach its energy efficiency and global warming reduction goals.

SCE is not the only party that sees significant deficiencies in the existing efficiency programs available to owners and tenants of low-income multifamily properties. As The East Los Angeles Community Union et al. ("TELACU") noted in its testimony:

> Existing energy efficiency programs have not been able to achieve their potential for penetration within the multifamily housing sector in California. As a result, significant opportunities to save energy and reduce costs within this market have not been realized to the fullest.

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[43] Application of Southern California Edison Company (U 338-E) for Approval of Its California Rates for Alternative Energy (CARE), Energy Savings Assistance, and Cool Center Programs and Budgets for 2012-2014, p. 28 (May 16, 2011).

[44] It is interesting that SCE refers to " owners and managers of multi-family properties" as a category of "residential customers." One of the principal concerns that NCLC/CHPC/NHLP have is that owners and managers are <u>not</u> considered as sufficiently connected to the "residential customers" to whom they provide housing, thus requiring the owners/managers to apply to the general energy efficiency program for common area energy measures (building envelope, boilers, HVAC systems, etc.) while income-eligible tenants must apply to ESAP. The barriers that this creates for achieving deep energy savings in multifamily buildings are discussed at length in this section V.

Testimony of James Hodges on behalf of TELACU et al., attached TELACU-Pilot description, p. 2.

Other key stakeholders agree that savings are being missed in the multifamily sector. In April 2011, the Multifamily Subcommittee of the California Home Energy Retrofit Coordinating Committee ("MF HERCC") issued a lengthy report, "Improving California's Multifamily Buildings: Opportunities and Recommendations for Green Retrofit & Rehab Programs" (Apr. 11,2011). Its conclusions are quite similar to those voiced by SCE and TELACU. The MF HERCC report noted that while single-family home weatherization and whole-house programs were very active and hold the potential to achieve "impressive energy savings":

> their approaches do not neatly carry over into the multifamily and affordable housing sector. The multifamily and affordable housing sector is different from the single family sector in many ways, and optimal energy efficiency improvements at the whole-building level cannot be accomplished by merely modifying or expanding the single-family programs. The opportunities and challenges unique to the multifamily sector can only be met if there are well-designed and well-coordinated programs and policies that address this sector's specific infrastructure. . . . Multifamily develop/owners find it time consuming and daunting to sort through the range of individual measure and targeted programs that might apply to their properties, and to make sense of the varying application procedures and requirements associated with each program.[45]

Thus, there appears to be consensus among a broad range of parties that current program designs could work better for multifamily buildings and that exiting program designs act as barriers to achieving deep energy savings.

Certainly, the witnesses presented by NCLC/CHPC/NHLP agree. As Matt Schwartz succinctly noted, "The multifamily rental housing sector is not well served by the ESA Program." Reply Testimony of Matt Schwartz, p. MS-4. Dan Levine, Senior

[45] MF HERCC report, p. 3. The MF HERCC report is discussed and cited in the Testimony of Matt Schwartz, MS-12 to MS-17 and is available at http://www.multifamilygreen.org/wp-content/uploads/2011/02/MF-HERCC_Multifamily-Program-Design_Final_04112022.pdf.

Vice-President of Construction at the John Stewart Company, which manages a portfolio of 350 affordable and market-rate properties[46] encompassing more than 20,000 residential units,[47] provided more detail and a front-line perspective on the barriers that the existing efficiency programs create for multifamily property:

> Generally, multifamily rental properties struggle to access the ESAP, general energy efficiency, and any other available efficiency programs in a coordinated way that minimizes the amount of effort and intrusion into the building. We struggle to sort through and access the myriad utility programs.

Testimony of Dan Levine on Behalf of NCLC/CHPC/NHLP ("Levine Testimony"), p. DL-4. In addition to having to overcome the barriers created by different programs with varying rules, multifamily owners have limited financial ability to invest in energy efficiency improvements, unless those improvements are limited in expense or are made in connection with replacing failed equipment that must be replaced:

> Most owners of low income multifamily rental properties lack the financial resources to make energy efficiency improvements in their buildings beyond basic replacement and repair. Publicly assisted housing developments face the challenge of having their rents and therefore cash flow restricted. Market-rate buildings where large numbers/percentages of the tenants are lower income face similar challenges in that they are typically already charging the maximum amount of rent allowed by the market. Thus, they cannot raise rents to make energy efficiency improvements since the market will not reward them with higher rents. . . . As a result, energy efficiency improvements are often considered non-essential luxuries.

Levine Testimony, p. DL-5. Thus, "[d]espite being a highly professional multifamily rental building management firm with 9 full time members who specialize or assist in

[46] Mr. Levine's testimony is intended to address <u>all</u> types of affordable housing, regardless of whether the property receives government housing subsidies: "When I refer to 'low income multifamily' properties I mean to include a range of properties that receive assistance from HUD, Low Income Housing Tax Credits, and other public sources, as well as unassisted properties that house families of low income." Levine Testimony, p. DL-5.

[47] Mr. Levine has supervised "200 alterations of existing multifamily properties and mange[s] and support[s] the property maintenance services at our over 350 multifamily residential properties." Testimony of Dan Levine, p. DL-2.

securing funding and other financial assistance for energy efficiency improvements, John Stewart Company still struggles to access utility energy efficiency programs."[48] The main barriers are the amount of time and effort its employees need to spend navigating the various programs, and the administrative costs "to meet the program requirements, coordinate communication with tenants, oversee the work, and to submit the application/reimbursement requests."[49] Moreover, ESAP's offering of a list of mostly prescriptive measures through third party contractors is not "well suited to the more complicated design and engineering standards of complicated multifamily buildings."[50]

The experience that Dan Levine describes for John Stewart Company is broadly representative of the experience of many multifamily property managers. Based on his participation in the development of the MF HERCC report and the experience of CHPC with multifamily rental housing, Mr. Schwartz testified that "[m]ost of the multifamily rental building owners and managers we have spoken to . . . find it frustrating and unrewarding to try to access ESAP, let alone to sort through the various IOU options and program requirements." Schwartz Testimony, p. MS-13.[51] He noted a range of differences between multifamily buildings and smaller residential properties which makes it difficult for existing program designs to well-serve this sector:

> Multifamily buildings can be low-rose or high-rise; often have a mix of commercial meters for certain loads and individual tenant meters for others; and have various combinations of central and individual tenant heating and hot water systems. For these reasons, programs intended to reach and serve multifamily properties must be carefully designed for that sector.

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[48] Levine Testimony, p. DL-6.
[49] *Id.*
[50] *Id.*
[51] Mr. Schwartz also noted, like Mr. Levine, that affordable multifamily owners do "not have sufficient capital funds to finance these [energy efficiency]improvements themselves" and that "few had successfully accessed programs" including ESAP. Schwartz Testimony, p. MS-6.

Schwartz Testimony, p. MS-14 & n. 12.

B. ESAP's Multifamily Programs Must Allow for A Single Point of Contact/"One-Stop Shopping" for All Tenant and Owner Loads; Allow All Cost-Effective Measures to Be Implemented (Including Heat and Hot Water); and Provide Adequate Incentives

1. Single Point of Contact/"One-Stop Shopping"

As SCE noted in its initial application in A. 11-05-017:

> Energy efficiency efforts for this [multifamily] segment must deal WITH both owners/managers of multi-family buildings and tenants. A significant challenge to overcome is that the Energy Savings Assistance Program is targeted at the low-income household, and not at the building.

Application, p. 28. SCE aptly summarizes one of the major barriers to reaching more multifamily buildings in ESAP and achieving deeper energy savings in each building served: ESAP targets individual low-income households, and only if the usage runs through a tenant-paid meter, and thus fails to get at both tenant and owner loads in an effective manner that facilitates deep energy savings . To overcome this barrier, ESAP should incorporate a single point of contact for income-qualifying multifamily properties (i.e. those with at least 80 percent of units with income-eligible households) and allow for true one-stop shopping that will ensure that all cost-effective and available energy efficiency measures are installed in a multifamily building, whenever feasible.[52]

The idea that the IOUs should offer multifamily building owners and tenants one-stop shopping is supported not only by NCLC/CHPC/NHLP,[53] it was one of the key

[52] By recommending a single point of contact and one-stop shopping, NCLC/CHPC/NHLP are not suggesting that all measures would be provided for free, regardless of whether the affected load runs through an income-qualifying tenant's meter or an owner's meter. Rather, we make these recommendations to overcome the barriers that have been discussed above and also to ensure that ESAP achieves far deeper savings whenever it serves a multifamily building. We discuss below (§ C, *infra*) the structure of free services and incentives that we recommend.

[53] Levine Testimony, p. DL-4 to DL-5: "[W]e recommend a whole-building approach and. the creation of a 'one-stop shop' that maximizes the amount of assistance tenants and buildings owners/managers can receive by accessing the various energy efficiency programs in a coordinated way while reducing the

recommendations of the MF HERCC report[54] and, as noted in the testimony of Matt Schwartz, is supported by intervenors Green for All, Center for Accessible Technology, and National Asian American Coalition/Latino Business Chamber of Los Angeles/Black Economic Council.[55] The Natural Resources Defense Council ("NRDC") also "supports CHPC/NCLC/NHLP's recommendation to provide a single point of contact for owners/managers of multifamily buildings to access the array of utility-financed energy efficiency programs."[56] All of the IOUs also support a single point of contact as an important component of providing services to multifamily properties, at least in their Energy Upgrade California pilots.[57]

As recommended by Matt Schwartz in his testimony, one-stop shopping would offer multifamily buildings a single point of contact who would arrange for a broad array of services that would best meet the building's energy needs:

> The IOUs would designate persons . . . with strong knowledge and experience with their ESAP and their respective incentive programs who would help the multifamily property owner/manager assess the energy savings opportunities at the property, match them to service offered via ESAP as well as IOU incentive and rebate programs . . . complete all applications, coordinate the delivery of IOU services and products to the building and oversee quality and assurance verification . . . . The main point is that the owner/manager would <u>not</u> have to contact multiple individuals to see the process all the way through. . . .

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administrative costs for multifamily property owners/managers and the disruptions to our tenants." *See also* Schwartz Testimony, MS-7 (a fundamental barrier to multifamily buildings accessing energy efficiency programs is "failing to offer a single point of contact").

[54] Schwartz Testimony, p. MS-13.

[55] Schwartz Testimony, p. MS-11.

[56] Reply Testimony of Alex Jackson of behalf of NRDC, p. 11.

[57] *See* Southern California Gas Company's Responses to Administrative Law Judge's Ruling Seeking Comments, Set No. 1 (filed Jan. 23, 2012), Appendix A (Dec. 22, 2011 Advice Nos. 2681-E, 3268-G/3972-E, 4312-G & 2320-E/2081-G), Attachment A: Multifamily Energy Upgrade California Pilot Program Implementation Plan, p. A-7 ("A single point of contact will help the property owner or manager navigate through the incentive process"); p. A-11 (the SCE/SCG Multifamily pilot "will field test a single-point-of-contact approach");p. A-17 (SDG&E multifamily pilot "will field test a single-point-of-contact approach"); p. A-23(PG&E pilot "will explore the concept of instituting a Multifamily Energy Efficiency Manager ('MERM') to serve as a single point of contact for a multifamily building owner").

> Another key to the expediter's role would be to provide the owner with simple, clear information regarding all available incentives . . . .[58]

Notably, virtually all of the parties who have commented on multifamily issues and proposed pilots agree that a single point of contact who offers one-stop shopping to those buildings is critical to achieving deep energy savings in these buildings.[59] Moreover, offering a single point of contact would address, in part, one of the concerns strongly voiced by Commissioner Ferron in a recent Scoping Memo in the general energy efficiency docket:

> The refrain I have heard as much as any since taking over the EE proceedings is that there are too many programs, that the programs are too complex, and that simplification of the Commission-authorized suite of programs would go a long way to increasing energy savings and increasing the number of customers that take part in the programs.[60]

NCLC/CHPC/NHLP urge the Commission to require the IOUs to develop a single point of contact for owners or tenants in multifamily buildings seeking assistance from ESAP alone, or from ESAP and the general energy efficiency program, and to not postpone such a mandate for future pilots or proceedings.[61] This would "go a long way

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[58] Schwartz Testimony, p. MS-15. *See also* Schwartz Reply Testimony, p. MS-11 (discussing requisite capabilities of the single point of contact/energy efficiency "Manager"); Reply Testimony of Ann Silverberg of Behalf of NCLC/CHPC/ NHLP, p. AS-7 ("A 'one stop shop' . . . should streamline the procedures to access and enroll in all appropriate energy efficiency opportunities . . . [and] facilitate the delivery of the services into a well-coordinated package"); NCLC/CHPC/NHLP Responses to "Administrative Law Judge's Ruling Seeking Comments Set No. 1' – Category 1 Responses, p. 4 (outlining benefits from adopting one stop shop/single point of contact).

[59] In addition to intervenors already mentioned above, s*ee, e.g.,* (1) Testimony of Jim Hodges on Behalf of TELACU et al., attached TELACU-Pilot proposal, p. 4 ["True Single Point of Coordination and Collaboration (Multifamily energy Efficiency Manager)"]; (2) Reply Testimony of PG&E, p. 23 ("PG&E agrees that the single point of contact (or "one-stop shop") concept suggested by several parties (including TELACU and NCLC *et al.*) is a good concept that should be explored further in a pilot"); (3) Rebuttal Testimony of SCE, p. 17 ("Another area of consensus is the need for a Single Point of Contact (SPC) [footnote omitted; citing NCLC/CHP/NHLP testimony] . . . A SPC will increase the efficiency of delivered program services as well as increase the confidence level of property owners.") & p. 20 ("SCE is working to employ an SPC approach to guide property owners through the various programs in retrofitting their multi-family property") .

[60] R. 09-11-014, Oct. 25 Ruling.

[61] See § D, *infra*, for the arguments of NCLC/CHPC/NHLP as to why changes to programs serving multifamily housing should not be delayed.

to increasing energy savings and increasing the number of customers that take part in the programs."

2. ESAP Must Adopt An Audit-Based "Whole Building" Approach to Multifamily Buildings That Does Not Automatically Preclude Measures That May Be Cost-Effective

Many of the parties in this proceeding who have commented on multifamily issues support ESAP taking a "whole building" approach that is far more likely to achieve deep energy savings, compared to the currently fragmented approach that has tenants applying to ESAP for prescriptive measures for loads on their own meters and owners applying to the general energy efficiency program for incentives that apply to common area measures.[62] Moreover, those who actually manage affordable multifamily properties and who have tried to access ESAP fully agree. Dan Levine, Senior Vice President for Construction for the John Stewart Company, testified:

> [W]e recommend a whole-building approach and the creation of a "one-stop shop" that maximizes the amount of assistance tenants and building owners/managers can receive by accessing the various energy efficiency programs in a coordinated way while reducing the administrative costs for multifamily rental property owner/managers and the disruptions to our tenants.

Levine Testimony, p. DL-5. He also noted some of the drawbacks that the current programs create for multifamily properties:

> ESAP provides assistance on a unit-by-unit basis depending on the responses of individual tenants rather than a decision by the building owner manager . . . This

[62] *See, e.g.,* Testimony of Jim Hodges on Behalf of TELACU et al., attached TELACU-Pilot proposal, p. 15 (referring to "more extensive whole-building, investment grade audit . . . to highlight key savings"); Reply Testimony of PG&E, p. 23 ("PG&E believes providing a whole-building offering to low income building owners is an interesting idea . . ."); Jackson Reply Testimony, p. 12 ("an integrated framework of direct install measures, incentives, rebates, and financing from multiple programs can be deployed to assist the property owner/manager in making 'whole building retrofit decisions") & p. 13 (NRDC supports efforts "to integrate ESA Program" measures with other available assistance "to enable 'whole building' retrofits and upgrades"); Schwartz Testimony, p. MS-11 (Green for All, Center for Accessible Technology, and National Asian American Coalition/Latino Business Chamber of Greater Los Angeles/Black Economic Council support a "multifamily rental whole-building, performance based approach that includes heating and hot water" as allowable measures).

> results in random and occasionally worthless improvements from the perspective of the building owner/manager, such as installation of lesser quality import light fixtures whose ballasts and lamps burn out frequently . . . . In addition, ESAP offers only a limited number of energy efficiency measures that exclude building systems like heating and hot water and do not get at the largest energy savings opportunities that would be available in a whole building approach . . . .

Levine Testimony, p. DL-7. Moreover, the failure to take a whole building approach and the currently fragmented service offerings lead to "[r]epeated contacts with tenants and entry into tenant units," thus creating high barriers to program participation. Levine Testimony, p. DL-8. To avoid this disruption and thus maximize potential savings, NCLC/CHPC/NHLP recommend that coordinated, whole building energy efficiency services be provided:

> through a single general contractor providing the full scope of work . . . determined in the whole-building investment grade audit. . . . New York's Multifamily Performance Program offers some valuable ideas about the role the [lead contractor/] Manager can play. Notably, [the single general contractor can] . . . act as the "owner's agent for the entire project, from the initial meeting to construction completion and beyond." [63]

The key to taking a whole building approach starts with a "comprehensive energy audit of all building systems and loads in the building" so that all cost-effective measures can be evaluated and prioritized , "in order to maximize the potential for deep savings. "[64]

The value of having an investment-grade audit at the outset cannot be over-stated. As Ann Silverberg, Senior Vice President for Portfolio and Capital Markets at Bridge Housing testified:

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[63] Schwartz Reply Testimony, p. MS-11 to MS-12. *See, also,* NCLC/CHPC/NHLP Responses to "Administrative Law Judge's Ruling Seeking Comments Set No. 1" – Category 2 Responses, p. 3 (noting that the Multifamily Affordable Solar Housing program allows applicant low income multifamily residential housing to select a contractor for services, unlike ESAP, which requires low income multifamily residential housing to use service providers designated by utilities). *See, also,* California Public Utilities Commission California Solar Initiative Program Handbook, September 2011, *available at* http://www.gosolarcalifornia .ca.gov/documents/CSI_HANDBOOK.PDF, which allows a building owner to select a contractor (p. 7) from a list of Solar Contractors (p. 8).

[64] Schwartz Testimony, p. MS-15; *see, also*, Levine Testimony, p. DL-8.

> We strongly support the idea of audits with no cost (or just nominal cost) to the building owner. An investment-grade audit is a near essential, threshold tool for a building owner to commit to making investment to reach deeper energy savings.

Reply Testimony of Ann Silverberg on Behalf of NCLC/CHPC/NHLP ("Silverberg Reply Testimony"), p. AS-4.[65] An investment-grade audit is the key to unlocking whole-building savings that would otherwise not be obtained. Moreover, in the multifamily context, a "whole-building audit" allows both the IOUs and owner "to determine the most appropriate measures on an individual building-by-building basis."[66]

No party truly opposes taking a whole building approach to multifamily buildings, but the IOUs or other parties may argue that the whole building approach should be adopted in Energy Upgrade California, or first tested out in an existing ors yet-to-be-launched pilot. NCLC/CHPC/NHLP maintain that the benefits of taking a whole building approach are clear, and that failing to incorporate a whole building approach into ESAP now will merely perpetuate the current structure that creates undue barriers to tenants and owners alike. As long as tenants must apply separately to ESAP and document their incomes on a household-by-household basis, while owners must apply separately to Energy Upgrade California or any other program apart from ESAP, too few tenants will apply[67] and too many owners will decide that applying separately for limited incentives for common area measures is not worth the effort.[68] While NCLC/CHPC/NHLP strongly support ESAP taking a whole building approach for

[65] Bridge Housing provides "over 13,000 high-quality homes throughout California," and "is committed to environmental health and sustainability." Testimony of Ann Silverberg, p. AS-2 to AS-3. Bridge Housing is thus exactly the type of organization that IOUs should be interested in having participate in their energy efficiency programs.
[66] Responses of NCLC/CHPC/NHLP to "Administrative Law Judge's Ruling seeking Comments, Set No. 1" – Category 1 Responses, p. 3(answer to question 12. a.).
[67] See the Levine Testimony, p. 7, where he describes how "a refrigerator exchange program that should have resulted in exchange of refrigerators at 56 units was reduced to less than one third due to the burdensome and eventually untenable interview and qualification process."
[68] Levine Testimony, p. DL-6.

multifamily buildings, they are not suggesting that common area measures be provided for free to owners;[69] rather, that ESAP provide a portal through which owners and tenants can both achieve much deeper energy savings.

The only way to take a true whole building approach to multifamily housing is by ensuring that measures identified as cost-effective by an investment-grade audit are potentially allowable measures. However, based on prior Commission decisions, heat and hot water measures are not allowed in rental properties.[70] The legal and policy questions raised by the Commission's prohibition on heat and water measures are discussed immediately below.

3. The Commission Ruling That Prohibits Heating and Hot Water System Repair and Replacement in Rented Housing Should Be Revised

In the prior decision on the IOUs three-year energy efficiency programs and budgets, the Commission held:

> [N]o furnace repair and replacement or water heater repair and replacement work shall occur in violation of our holding in D. 07-12-051 that heating and water heating in rented housing are the responsibility of the landlord:
>
> > We are not convinced that utility ratepayers should assume the costs of appliance repairs and replacements. Section 1941.1 of the California Civil Code requires landlords to provide space heating and hot water to renters. California law also requires landlords to be responsible for certain household repairs, to assure the unit is habitable and to repair problems that make the unit uninhabitable.[71] It is the landlord's responsibility to assure rental property is safe.

[69] In § C, *infra*, NCLC/CHPC/NHLP describe the incentive structure they believe appropriate should a whole building approach be adopted.

[70] NCLC/CHPC/NHLP are fully aware that these measures are not allowed in one family and small rental buildings except for health and safety reasons, but do not address here whether those rules should be reconsidered.

[71] "*See Green v. Superior Court* (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704], which held that all residential leases and rental agreements contain an implied warranty of habitability . . . ." [Footnote in original].

D. 08-11-031, p. 30 & n. 33. As more fully discussed below, nothing in the California Civil Code or case law requires a property owner to replace inefficient heating or hot water equipment with highly-efficient equipment. Therefore, while it is true under the Civil Code and the warranty of habitability that an owner would have to repair or replace a heating or hot water system that is dangerous to the health of tenants or completely inoperative, nothing requires an owner to replace old and highly inefficient that provides adequate heat or that delivers adequate quantities of hot water. Thus, the prohibition first articulated in D. 07-12-051 and restated in D.08-11-031 allows highly inefficient heating and hot water equipment to remain in place. Moreover, that prohibition can be fairly read to prohibit ESAP assistance for relatively inexpensive repairs or system upgrades (e.g., boiler controls or blankets, thermostatic valves) – not required by the Civil Code or the warranty of habitability – that could achieve significant energy savings. We do not believe it is the Commission's intent to prohibit cost effective measures that result in substantial energy savings from being considered, especially those relatively inexpensive ones described above.

NCLC/CHPC/NHLP thus ask the Commission to lift the current prohibition and revise its current policy so that heating and hot water replacements or repairs could be allowed under ESAP, when an investment-grade audit shows one or more of those measures to be cost-effective in a particular building. We are <u>not</u> suggesting that these measures should be prescriptive measures that are always allowed, nor are we asking that these measures be provided for free.[72] At the outset, we note that this position is

[72] We address the level of incentives that should apply in § D, *infra*.

supported by Green for All and National Asian American Coalition/Latino Business Chamber of Greater Los Angeles/Black Economic Council[73] as well as by the NRDC.[74]

First, addressing the legal bases upon which the Commission has relied for prohibiting heat an hot water repairs or replacements in rented property, Civil Code § 1941.1 provides in relevant part that a:

> dwelling shall be deemed untenantable for purposes of Section 1941 if it *substantially lacks* any of the following affirmative standard characteristics . . . :
>
> …….
>
> (a) effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.
>
> (b) Plumbing or gas facilities that *conformed to applicable law in effect at the time of installation,* maintained in good working order.
>
> (c) A water supply . . . that is under the control of the tenant, *capable of producing hot and cold running water,* or a system under the control of the landlord, *that produces hot and cold running water* . . .
>
> (d) Heating facilities that *conformed with applicable law at the time of installation*, maintained in good working order.
>
> …….

Notably, Section 1941.1 is completely silent as to the efficiency of any heating or hot water equipment. To the contrary, the language expressly allows for use of equipment that "conformed to applicable law in effect at the time of installation," even if under current codes or standards installation of such equipment, due to efficiency or other reasons, would be illegal. No case interpreting Section 1941.1 begins to imply that an owner is responsible for providing energy-efficient heating or hot water equipment, even at the level of equipment that complies with current federal appliance efficiency

[73] Schwartz Testimony, p. MS-11.
[74] Opening Testimony of Alex Jackson on Behalf of NRDC ("Jackson Testimony"), pp. 16-17 ("[W]e find nothing in law or record to support the Commission's conclusion that ESA Program funds cannot in any way contribute to improving the efficiency of heating and hot water systems in tenant dwellings.")

standards or "Title 20" standards.[75] In fact, because landlord-tenant laws like Section 1941.1 do not require any particular level of efficiency for heating or hot water equipment, many states that are considered energy efficiency leaders and that have laws comparable to Section 1941.1 allow their utility energy efficiency programs to provide incentives for installation of efficient equipment, including in rental properties.[76]

Similarly, the decision in *Green v. Superior Court*, 10 Cal.3d 616 (1974), cited in D. 07-12-051, clearly stated that the implied warranty of habitability "does not require that a landlord ensure that leased premises are in perfect, aesthetically pleasing condition, but it does mean that 'bare living requirements' must be maintained." *Green*, 10 Cal.3d at 637. Nothing in G*reen* or subsequent court decisions suggests that the warranty of habitability can require an owner to replace energy-inefficient equipment.[77]

Of course, others may argue that single family homeowners currently cannot have their heating or hot water equipment repaired or replaced because those investments are not seen as cost effective (except that repair or replacement is allowed when those systems have failed, or when repair or replacement otherwise provides health and safety benefits to the homeowner) , and, therefore that there is no basis to allow repair or

[75] Cal. Code Regs. tit. 20, §§1601 – 1608 contains the state's appliance efficiency standards.
[76] *See, e.g.*, Or. Rev. Stat. § 90.320(similar language to Section 1941.1); N.Y. Mult. Dwell. Law §§ 75, 79 specifying owner's heating and hot water obligations); Wash. Rev. Code § 59.18.060 (specifying owner's heating and hot water obligations). Yet each of these states allows the use of ratepayer energy efficiency funds to support investments in efficient heating and hot water systems. *See* Energy Trust of Oregon, "Who We Are," *available at* http://energytrust.org/about/who-we-are (Oregon "Energy Trust is funded exclusively by customers of Portland General Electric, Pacific Power, NW Natural and Cascade Natural Gas"; "multifamily property owners" eligible in Oregon and Washington) and "Small Multifamily Properties" *available at* http://energytrust.org/residential/small-multifamily ("cash incentives are available for "weatherization, heating + cooling, water heating"); Con Edison, "Energy Efficiency Residnetial," *available at* http://www.coned.com/energyefficiency/residential_multifamily.asp ("Rebates for common area efficiency measures such as boilers, furnaces, and hot water heaters").
[77] Certainly, "in practice, landlords are not required to replace heating and hot water systems, no matter how inefficient they are. . . . To the extent this is the case, the prohibition on heating and hot water replacements and repairs in D. 08-11-031 may be hindering important energy efficiency savings that could otherwise be obtained." Schwartz Testimony, p. MS-17.

replacement or such equipment in multifamily housing. NCLC/CHPC/NHLP take no position on whether repair or replacement or heating or hot water equipment in one- to four-family units is cost effective as we have not studied the issue. However, we have introduced substantial evidence that such investments can frequently be cost effective in multifamily housing,[78] and we are proposing that such investments be partially supported by ratepayers only when an investment-grade audit demonstrates that the investment will be cost-effective, building-by-building.

Hot water loads are "often the single largest for multifamily buildings."[79] As the MF HERCC report discussed by Mr. Schwartz noted, the "single largest and most consistent [energy efficiency] opportunity in multifamily housing is reducing the energy consumed to heat domestic water, particularly when central systems are present."[80] Moreover, there are many relatively small upgrades that can be made to heating and hot systems, far short of full replacement, that significantly improve efficiency at relatively little cost.[81] As Appendix A to the NCLC/CHPC/NHLP Responses to "Administrative Law Judge's Ruling Seeking Comments Set No. 1" demonstrate, many of the replacements and repairs to heating and hot water systems cost $400 or less per unit yet yield substantial annual savings.[82]

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[78] Given the economies of scale that arise when, for example, a single boiler or hot water system serves 25, 50 or even 100 tenants, it is possible that heating and hot water investments that are not cost-effective in single family homes or buildings with less than five units are in fact cost-effective in much larger buildings. But it is also possible that there is need to revisit the current limitations on repairing or replacing heating and hot systems in single-family homes.

[79] Schwartz Testimony, p. MS-17.

[80] Schwartz Testimony, p. MS-17, n. 17.

[81] Schwartz Testimony, p. MS-17.

[82] Responses of NCLC/CHPC/NHLP to "Administrative Law Judge's Ruling Seeking Comments Set No. 1"- Category 1 Responses, Attachment A to Question 12, pp. 11, 13. The entries under each major heading are organized by cost per unit. Under "HVAC-Heating Systems, Repair and Replacement," there are seven buildings in which the per unit costs were less than $400, and each was expected to yield relatively large annual savings. Under "Water Heater, Repair and Replacement," there were eleven projects in which the cost per unit was less than $400, and each of these was again projected to yield substantial savings.

NCLC/CHPC/NHLP are fully aware that in proposing that heat and hot water measures no longer be categorically excluded, if the owner pays for the utilities providing heat or hot water, the question must be addressed as to whether investments in common heating or hot water systems provide benefits to low-income tenants.[83] NCLC/CHPC/NHLP maintain that in much affordable housing, benefits inherently flow, at least in part, to tenants, and we propose methods to ensure that tenants benefit in order to meet the mandates of Pub. Util. Code § 2790 and prior orders regarding ESAP.

The Commission itself has quite recently and favorably addressed the question of whether investments that reduce the energy bills of the owner of a multifamily housing benefits the tenants. In R. 10-05-004, a rulemaking docket regarding the "California Solar Initiative**"** and related issues, the "Staff Proposal did not recommend incentives to low-income residents of *multifamily housing*, reasoning that 30% of multifamily residents do not pay separately for water heating and the *Commission could not ensure savings* from a SWH installation *would flow to the tenant.*"[84] In that docket a very broad range of parties "objected to the exclusion of multifamily low-income properties and urged the Commission to allow residents of multifamily housing to qualify for low-income SWH incentives."[85] In agreeing with the position taken by these groups, the Commission noted:

> The Commission agrees that *even in low-income properties where low-income residents do not pay a gas bill separate from the rent* or where rent and utilities are subject to joint caps*, the benefits of energy savings from SWH may be able to*

Appendix A, which summarizes the results of scores of actual audits in multifamily buildings, demonstrates that efficiency investments in multifamily heat and hot water systems an often be cost-effective.

[83] *See, e.g.,* Pub. Util. Code § 2790, which requires "an electric or gas corporation to perform home weatherization service for low-income customers . . . taking into consideration both the cost-effectiveness of the services and the policy of reducing hardships facing low-income households."

[84] D. 11-10-015, p. 12 (issued Oct. 13, 2011)(Emphasis added).

[85] D. 11-10-015, p. 13. Those parties included utilities (SDG&E/SoCalGas), consumer advocacy groups (e.g., TURN), housing managers (e.g., Bridge Housing), ACCES, and others.

> *be passed on to tenants in accordance with Section 2866(d).*[86] This can occur because *organizations that manage or operate low-income properties may reinvest the money saved on energy bills to improve the property or offset other costs.*[87]

NCLC/CHPC/NHLP fully agree that many managers of affordable housing, whether assisted by HUD or purely private sector, will reinvest money saved on energy bills in building improvements or services that directly benefit tenants. Since hot water is often the single largest energy load in multifamily buildings, investments that improve hot water system efficiency are particularly likely to lead to large enough savings that would allow managers to make other, needed building improvements.

However, NCLC/CHPC/NHLP propose a more cautious approach that is more likely to ensure that any benefits from energy savings in fact primarily flow to tenants. In his testimony, HUD official Wayne Waite first noted that it is not reasonable to assume that "tenants will not benefit from investments in common system or common-area measures."[88] He then explained how the DOE and HUD developed procedures for multifamily buildings served in the Weatherization Assistance Program in order to comply with a federal mandate that "the benefits of weatherization assistance in connection with such rental units . . . will accrue primarily to the low-income tenants residing in such units."[89] DOE issued a formal guidance, WAP Notice 10-15A (April 8, 2010), that detailed the ways in which owners would be deemed to have flowed through

[86] Pub. Util. Code § 2866(d) provides: "The commission shall ensure that lower income households, as defined in Section 50079.5 of the Health and Safety Code, and, if the commission expands the program pursuant to subdivision (c), ratepayers participating in a LIEE program, that receive gas service at residential housing with a solar water heating system receiving incentives pursuant to subdivision (a), benefit from the installation of the solar water heating systems through reduced or lowered energy costs." This is a stricter "tenant benefit" requirement than explicitly exists in ESAP.
[87] D. 11-10-015, pp. 13-14 (emphasis added).
[88] Testimony of Wayne Waite Re: Tenant Benefits on Behalf of NCLC/CHPC/NHLP ("Waite/Tenant Benefits"), p. WW C-3.
[89] Waite/Tenant Benefits, p. WW. C-3 to C-4.

sufficient benefits to tenants. CSD, which administers the federal WAP program in California, then issued its own parallel guidance (DOE WAP ARRA No. 13) implementing DOE's Notice 10-15A.[90] As Mr. Waite testified:

> The CSD guidance provides a useful framework for ensuring that the benefits that flow from these energy efficiency investments accrue primarily to tenants. . . . I recommend that the Commission thus consider making ESAP available to owners of multifamily properties and imposing similar obligations to ensure that tenants benefit.[91]

C. Under a Whole Building Approach with One-Stop Shopping, ESAP Should Bundle Together Free Services That ESAP Currently Offers with Incentives for Measures Reducing Owner's Loads

Under the proposals that NCLC/CHPC/NHLP have made above, ESAP services for income-qualifying multifamily buildings would start with an investment-grade audit that would identify all cost-effective energy efficiency measures, regardless of whether a particular load flows through the tenant's or owner's meter. The IOU-designated single point of contact would facilitate one-stop shopping by offering all free services currently available under ESAP and any other incentives or rebates that may be available as well. In addition, the single point of contact/expediter would work with the owner/manager in a pre-audit screening process to predict the likelihood of the building reaching a 20 percent energy savings performance target[92] and, in turn, the value of conducting an audit. Such an approach would best carry out in the multifamily sector some of the key aspects of the Commission's decision and order in the prior ESAP/CARE dockets:

> We should require a "whole house" approach to meeting customer's energy needs, which focuses on making the state's entire housing stock energy efficient,

[90] CSD's guidance requires the owner, among other options, to agree that rents will not be increased for a period of time after completion of the weatherization work; to invest the energy savings in facilities or services that offer a direct benefit to tenants; or to establish a "shared savings" program where the energy savings are shared with tenants. Waite/Tenant Benefits , p. WW. C-4 to C-5.
[91] Waite/Tenant Benefits, p. WW. C-5.
[92] As explained in § C, *infra*, NCLC/CHPC/NHLP are proposing that incentives be offered to the owner only if projected savings are expected to exceed 20%.

> rather than installing insignificant measures in a scattering of homes on a piecemeal basis.

D. 08-11-031, p. 215, Conclusions of Law #12. On a related point, the Commission emphasized the importance of importance of "treating homes, rather than customers."[93] In the context of multifamily buildings, this conclusion of law suggests making sure that the entire multifamily building is treated by ESAP, rather than focusing on individual tenant units and the families in those units willing to request ESAP services. Moreover, the Commission emphasized the importance of ESAP not limiting the measures installed in any homes:

> Each house IOUs serve in the LIEE program should receive an individualized energy audit so that it receives all feasible measures necessary for maximal energy efficiency. To the extent the energy audit focuses on energy use, such information should not be used to limit the number of feasible measures installed in an eligible home.

To the extent that the Commission adopts the NCLC/CHPC/NHLP audit-based, whole building approach, which would be fully consistent with the portions of D. 08-11-031 just cited, ESAP will need to develop a set of incentives for measures that flow through the owner's meter – we are not proposing that such measures should be provided at no cost to owners although, as discussed above, we believe investing in such measures benefits tenants.

Based on the testimony filed in this case, the current incentive structures for measures flowing through owner meters simply are not adequate. As Ann Silverberg testified, existing rebates and incentives "are not enough":

> BRIDGE[94]has been implementing a comprehensive plan to make energy efficiency improvements in our buildings for ten years. We have some experience in accessing (or trying to access) these programs. While rebates and

[93] D. 08-11-031, p. 214, Conclusions of Law #3.
[94] Ms. Silverberg is Senior Vice President for Portfolio and Capital Markets at Bridge.

> incentives are welcome, they have not been enough, absent other factors, to motivate us to replace major energy-consuming measures. While incentives and rebates have encouraged us to replace central systems that are approaching failure and would need to be replaced irrespective of the rebate, the level of assistance must be higher for BRIDGE to be able to make energy efficiency improvements sooner.

Silverberg Reply Testimony, pp. AS-5 to AS-6.[95] As Mr. Schwartz noted, current incentives can provide as little as 2.5% of the total cost for boiler measures.[96]

NCLC/CHPC/NHLP propose the following structure of free services and incentives for income-qualifying multifamily buildings (i.e. those with at least 80 percent of units with income-eligible households):

- Measures within tenant units that currently are provided at no cost should continue to be provided free of charge.

- Incentives for whole building energy audits should be capped at the lesser of $100 per income-eligible unit or the actual cost of the audit, and in no event to exceed $15,000. As a condition to receiving this assistance for audits, income-qualifying multifamily building owner/managers must agree to a whole building, performance-based approach that is projected to result in at least a 20 percent reduction in energy consumption.[97]

- Where the audit projects that total savings for all recommended measures will equal or exceed 20% of current energy consumption (including tenant and owner consumption, and tenant and owner savings), $1,000 per income-eligible unit for installation of measures that are cost-effective under the building-specific audit.[98]

[95] This testimony reinforces the arguments NCLC/CHPC/NHLP have made to reverse the prohibition on heat and hot water measures in rental properties. While owners unquestionably must provide adequate heat and hot water under Civil code § 1941.1, they have no obligation to replace old and inefficient systems so long as there is sufficient heat and hot water being provided.

[96] Schwartz Reply Testimony, p. MS-9.

[97] In circumstances in which audit-projected savings are less than 20%, there may need to be a mechanism for recovering some or all of the subsidy provided towards the audit cost..

[98] *See* NCLC/CHPC/NHLP Responses to "Administrative Law Judge's Ruling Seeking Comments Set No. 1" – Category 1 Responses, pp. 5-8 (responses to question 12). The $1,000 incentive for energy savings at the 20% level is wholly consistent with proposals the IOUs themselves have made for their Energy Upgrade California pilots. *See* Southern California Gas Company's Responses to Administrative Law Judge's Ruling Seeking Comments, Set No. 1 (filed Jan. 23, 2012), Appendix A (Dec. 22, 2011 Advice Nos. 2681-E, 3268-G/3972-E, 4312-G & 2320-E/2081-G), Attachment A: Multifamily Energy Upgrade California Pilot Program Implementation Plan, pp. A-13, A-18 & A-23.

Further, anticipating that some parties will argue that the multifamily sector could thereby get an undue share of ESAP funds, NCLC/CHPC/NHLP believe it would be appropriate to adopt a program-level annual spending cap on the $100 per unit/$1000 per unit incentives just proposed, with such a cap bearing a fair and reasonable relationship to the number of income-eligible multifamily units as a percentage of all income-eligible ESAP households.[99]

D. The Commission Should Not Defer Action On The NCLC/CHPC/NHLP Multifamily Proposals

Currently, there are a number of IOU-sponsored multifamily pilots being proposed or in operation[100] as well as pilots being proposed or supported by various intervenors. NCLC/CHPC/NHLP strongly maintain that the changes which they propose be made to ESAP to achieve deeper savings in multifamily rental buildings can and should be adopted in the final decision scheduled for April 2012 and that further pilots will needlessly delay what can be accomplished now. Spending time on pilots will also put California behind other states' efforts in the multifamily area at a time when California must achieve some of the strictest greenhouse gas ("GHG") reduction and

[99] NCLC/CHPC/NHLP do note, however, that the companies in the past have underspent portions of their ESAP budgets and there thus may be limited need for concern that making ESAP more accessible to tenants and owners of multifamily buildings will create undue budgetary burdens. *See, e.g.,* "Administrative Law Judge's Ruling Granting Pacific Gas And Electric Company's Motion To Shift Funds," CPUC 08-05-022 and related matters (Nov. 21, 2011) (approving shift of $2 million in unspent electric program funding to gas program funding); "Administrative Law Judge's Ruling Granting, In Part, San Diego Gas & Electric Company's Motion To Shift Funds," CPUC 08-05-022 and related matters (Nov. 21, 2011) (approving, in part, shift of $6.5 million in unspent electric program funding); "Administrative Law Judge's Ruling Granting Southern California Gas Company's Motion To Shift Funds," CPUC 08-05-022 and related matters (Nov. 21, 2011) (approving, *inter alia*, shift of $16.96 million in unspent 2010 program funds to 2011 weatherization sub-category).

This last fund shift, which carried over unspent 2010 funds into 2011, highlights the fact that changes in the ESAP rules for multifamily programs will not necessarily "break the bank" for ESAP. In any event, as noted NCLC/CHPC/NHLP are not averse to the Commission setting a budget cap for the multifamily incentives we propose.

[100] *See, e.g.*, *See* Southern California Gas Company's Responses to Administrative Law Judge's Ruling Seeking Comments, Set No. 1 (filed Jan. 23, 2012), Appendix A.

energy efficiency goals in the country. In order to reach those GHG and energy savings goals, the Commission should adopt the changes NCLC/CHPC/NHLP recommend in the final decision tentatively scheduled for release in April 2012.[101]

Several NCLC/CHPC/NHLP witnesses underscored the drawbacks of engaging in further pilots. Mr. Schwartz testified that additional multifamily pilots are not needed as they would unduly delay a number of proven improvements that could be made.[102] To adopt the NCLc/CHPc/NHLP recommendation that housing subsidies not be counted as income, the Commission simply needs to make a policy decision; there is nothing that needs to be piloted first. Regarding our recommendation to allow for expedited enrollment, the decision is again basically a policy choice; any implementation details could be resolved in a Commission-directed working group within a relatively short period of time. There is thus no reason why the Commission cannot decide to adopt expedited enrollment in its decision tentatively scheduled for release in April. Similarly, all of the IOUs have expressed an interest in trying the single point of contact approach; this is a best practice employed in other states that needs no further study. With respect to the more complex changes we propose involving the audit-based whole building approach, the Commission can readily make the relevant policy decisions in the April-scheduled decision and direct a working group to work out the details of implementation within a set period of time.[103]

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[101] NCLC/CHPC/NHLP are aware that the Amended Scoping Memo and Ruling (filed January 26, 2012), p. 7, states that the final decision issued on or about April 2012 will include "all issues except issues relating to . . . [the] multifamily sector" and that it sets aside the time period March 2012-July 2013 for "[f]urther review of . . . [the] multifamily sector." NCLC/CHPC/NHLP respectively request that the Commission reconsider that proposed schedule and include all multifamily issues in the decision tentatively scheduled for April 2012.

[102] Schwartz Reply Testimony, p. MS-3.

[103] The Commission has already adopted a whole house policy, at least for smaller buildings, in D. 08-11-031, p. 215, Conclusions of Law #12.

As Mary Luevano noted in her reply testimony on behalf of NCLC/CHPC/NHLP, continued pilots run counter to the principles established in AB 758 (Statutes of 2009, Chapter 470).

> AB 758 strives to create a comprehensive effort to achieve greater savings in California's existing residential and non-residential building stock. To that end, ESA and other energy efficiency programs must provide deeper and better-coordinated services. . . . . The resulting program-wide changes [in the TELACU-proposed pilot] are likely to take too long to be considered consistent with the AB 758 objectives. Piloting…will delay meaningful change.

Luevano Reply Testimony, p. ML-3 to ML-4.

Similarly, Charles Harak testified for NCLC/CHPC/NHLP that "a multifamily pilot is not needed . . . going forward with a three-year pilot may unduly delay implementation of proven approaches."[104] He noted that the states of Massachusetts., Rhode Island and New Jersey – which are respectively rated "#1, #3, and #15 in the country in the '2011 State Energy Efficiency Scorecard produced by ACEEE[105]" – all have moved forwarded with full-scale programs that are specifically tailored to address the unique energy efficiency circumstances of affordable multifamily rental housing, without first going through pilots, and allowing <u>all</u> measures (including heat and hot water) which can be shown to be cost-effective to install.[106]

Mr. Harak noted that prior to the development of the Massachusetts Low Income Multifamily Program, affordable housing owners and managers had voiced complaints that multifamily "properties could not afford to make the co-payments that the programs

[104] Reply Testimony of Charles Harak on Behalf of NCLC/CHPC/NHLP ("Harak Reply Testimony"), p.CH-6. Mr. Harak has had extensive experience with the design and operation of the Weatherization Assistance Program, multifamily energy efficiency programs, and utility funded efficiency programs in general. He holds seats on the Massachusetts Energy Policy Advisory Group that oversees that state's WAP and on the Massachusetts Energy Efficiency Advisory Council, which reviews and approves the three-year energy efficiency plans filed by that state's IOUs. Harak Reply Testimony, pp. CH-3 to CH-5.
[105] ACEEE is the acronym for the American Council for an Energy-Efficient Economy.
[106] Harak Reply Testimony, p. CH-6.

required . . . and that it was too hard for the owners to figure out how to simultaneously – or even sequentially- access the different programs…"[107] These complaints are similar to the ones voiced in this docket by Mr. Levine and other NCLC/CHPC/NHLP witnesses. In response to those complaints, the Massachusetts IOUs launched a full-blown (not pilot) program in the summer of 2010. In the first year, this program served "140 projects including 7,000 individual units," expending $10 million.[108] This strongly suggests that a pilot in California is not needed, and that the pilot proposed by TELACU is far too small, even if the Commission were to decide it otherwise has merit, as TELACU is proposing a two-and-a-half-year pilot that will reach no more than 8,500 households in those three years, and possibly only 4,250.[109] Since California has a multifamily population at least five times as large as Massachusetts, the TELACU pilot is far too timid in terms of scope.

In Massachusetts, <u>all</u> cost-effective measures are allowed, including heat and hot water, based on high-quality, standardized audit.

> Moreover, the program provides a single point of contact and a single web-based application. . . . The program is flexible in its contracting model, in that the owner/manager can use its own general or sub-contractor . . . or the LIMF [low-income multifamily program] will assist in arranging contractors if the owner manager prefers. Buildings are eligible if 50% of the households have incomes at or below 60% of median income. . . .[110]

Thus, the Massachusetts low-income multifamily program includes many of the major elements that NCLC/CHPC/NHLP propose here, yet:

> Massachusetts saw no need to pilot this program first, and every reason to move forward as quickly as possible….This successful implementation calls into question the need for a two-and-one-half year pilot of fairly limited scale.[111]

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[107] Harak Reply Testimony, pp. CH-6 to CH-7.
[108] Harak Reply Testimony, p. CH-7
[109] Schwartz Reply Testimony, p. MS-6.
[110] Harak Reply Testimony, p. CH-8.
[111] Harak Reply Testimony, p. CH-9.

In Rhode Island, NCLC facilitated meetings with National Grid ("NGRID," the utility that serves the entire state), the Energy Efficiency and Resource Management Council, the state's housing finance agency and other stakeholders.

> As a result, National Grid agreed to consider how its energy efficiency programs could be more accessible to affordable multifamily properties. . . . [Now] owners of affordable multifamily housing can receive substantial assistance for approved energy efficiency measures. . . . NGRID realized how much they could have been achieving in energy efficiency savings in the multifamily sector and have since been moving forward aggressively. This program is not a pilot.[112]

In New Jersey, Public Service Electric & Gas Company ("PSE&G") launched a Multifamily Program in 2010. The program provides a free investment grade audit with significant incentives for all qualifying measures that have a simply payback period of 15 years or less (heat and hot water measures included). In less than one year after the program was launched, 19 projects had received energy audits, 4 more audits were underway, and 4,484 multifamily rental units were in the program pipeline. This program was not first launched as a pilot, and the scope of New Jersey project (almost 4,500 units in the pipeline in less than one year) again makes the TELACU pilot appear far too limited, given the vastly larger size of New Jersey.[113]

These descriptions of three leading states' energy efficiency programs ably demonstrate that there is little need to pilot the proposals that NCLC/CHPC/NHLP have made to revise ESAP so that it serves more multifamily house and achieves deeper savings in each building served.[114]

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[112] Harak Reply Testimony, p. CH-10. Note that NGRID will pay 100% of the cost of weatherizing electrically heated buildings, and that the company provides a 75% rebate for energy efficiency improvements in gas heated buildings. *Id.*

[113] Harak Reply Testimony, pp. CH-11 to CH-12.

[114] To the extent that the commission is not willing to reach a final decision on these issues by the time the decision scheduled for April 2012 is actually released, NCLC/CHPC/NHLP strongly urge the Commission to send any unresolved issues to a working group that would: (a) be staffed by an Administrative Law Judge and appropriate Energy Division members; (b) be given a tight schedule for completing its work; and

VI. CONCLUSION

In conclusion, NCLC/CHPC/NHLP respectfully request that the Commission:

1. Exclude housing subsidies from the calculation of income in ESAP;

2. Adopt "expedited enrollment" as more fully described above;

3. Require the IOUs to implement an audit-based, whole building approach for multifamily buildings, including a single point of contact, that bundles together free services for tenant-unit measures and incentives for common systems/common area measures, as more fully described above; and

4. Revise the current blanket prohibition on ESAP repairing or replacing heat or hot water equipment in rental housing.

Respectfully submitted:

Charles Harak, Esq.
charak@nclc.org
National Consumer Law Center Inc.
7 Winthrop Square, 4th floor
Boston, MA 02110
617 542-8010 (ph)
617 542-8028 (fax)

ON BEHALF OF NCLC, NHLP AND CHPC.

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(c) be given very clear instructions for the issues that need to be addressed by the working group. In addition, NCLC/CHPC/NHLP believe it would be highly beneficial if such a Commission decision would also delineate how the results of the working group will be incorporated into ESAP as soon as is practicable, and well before the next round of ESAP applications are filed two-and-a-half years hence.