Docket:	A.11-05-017 etal.
Exhibit Number:	
Commissioner:	Timothy Simon
Admin. Law Judge:	Kimberly Kim
Witness:	Charles Harak

REPLY TESTIMONY OF CHARLES HARAK

ON BEHALF OF

NATIONAL CONSUMER LAW CENTER, NATIONAL HOUSING LAW PROJECT AND CALIFORNIA HOUSING PARTNERSHIP CORPORATION

A.11-05-017 etal.

December 9, 2011

Q1: Could you please state your name and business affiliation?

A1: My name is Charles Harak. I am a staff attorney and manager of the energy unit at the National Consumer Law Center ("NCLC").

Q2: Could you describe NCLC?

A2: NCLC is a nonprofit advocacy organization founded over 40 years ago that seeks to build economic security for low-income and other economically disadvantaged Americans; ensure that these households are treated fairly in the marketplace; and assist them in obtaining essential supplies of heating fuels, electricity and natural gas. We advocate for policies and programs that make it easier for low-income households to afford their energy bills and that increase the energy efficiency of their homes. We promote access to quality financial services and protect family assets from unfair and exploitive transactions that wipe out resources and undermine self-sufficiency.

Q3: Could you summarize your professional experience and qualifications?

A3: Yes. After graduating Cornell University in 1972 with a bachelor of arts degree, I attended Northeastern University Law School and earned my degree in 1976. Since graduating law school 35 years ago, I have devoted virtually my entire legal career to public interest work in non-profit organizations and government, with a focus on a broad range of energy and utility issues. Immediately after law school, I worked at the Massachusetts Public Interest Research Group on power plant construction issues. From 1979 to 1996, I worked at the Massachusetts Law Reform Institute, a state support center for legal services, on a broad range of energy, utility and housing issues. I brought two successful court cases that broadened the state's fuel assistance program (LIHEAP), making more people eligible for fuel assistance payments and increasing the amount of funding available to each household. I litigated many rate hike and other cases before the state's Department of Public Utilities. I authored "The Right to Light (and Heat) Handbook," a guide for utility consumers and co-edited newsletters on energy and housing topics for lawyers and advocates. In 1996, I joined the Regulated Industries Division of the Office of the Massachusetts Attorney General, where I worked on life insurance, auto insurance, telecommunications and various utility matters. After a period in private practice, where I also focused on utility-related matters, I next joined NCLC in 2001.

Q4: Do you have experience with the Weatherization Assistance Program ("WAP") and utility-funded energy efficiency programs?

A4: Yes. First, regarding WAP, my responsibilities at NCLC include providing legal advice and policy guidance on an almost daily basis to our state's network of local low-income weatherization agencies as well as working regularly with the state agency (Department of Housing and Community Development, "DHCD") that oversees WAP. DHCD is the state grantee of federal WAP funds. I hold a seat on DHCD's Energy Policy Advisory Group, a federally-mandated WAP advisory body that meets approximately quarterly. I am a co-editor and co-author of NCLC's treatise, "Access to Utility Service" and, in particular, have edited the "Weatherization" chapter. On behalf of NCLC, I have filed comments in Department of Energy proceedings regarding WAP. NCLC's advocacy played a key role in the issuance of WAP Guidance 10-15A, "Guidance Regarding Accrual Of Benefits To Low-Income Tenants In Multi-Family Buildings Under The Weatherization Assistance Program," which is intended to ensure that the benefits of weatherization services delivered to multifamily buildings accrue primarily to the low-income tenants who reside in those buildings. I have also made presentations on WAP at various conferences, including co-presenting at the 2010 National Community Action Foundation Conference with Robert Adams, Program Lead for WAP at the federal Department of Energy.

Second, regarding utility funded energy efficiency programs, I hold a seat on the Massachusetts Energy Efficiency Advisory Council (EEAC).[9] Pursuant to the Green Communities Act,[10] the EEAC "seek[s] to maximize net benefits through [utility] energy efficiency and load management resources and to achieve energy, capacity, climate and environmental goals through a sustained and integrated statewide energy efficiency effort." To carry out this mandate, the EEAC is required to "review and approve demand resource program plans and budgets." Like utilities in California, Massachusetts utilities are required to submit three-year energy efficiency plans and budgets, which ultimately must be approved by the Massachusetts Department of Public Utilities (the analog of the CPUC). The EEAC plays the role of reviewing and approving those three year plans before they are formally submitted to the state utility regulatory agency for its review.

In the past two years, my work has had a particular focus on advocating for policies and programs that increase the energy efficiency of multifamily buildings. I was the primary researcher and author of NCLC's "Up the Chimney: How HUD's Inaction Costs Taxpayers Millions and Drives Up Utility Bills for Low-Income Families," issued August 2010. This report highlighted the important role that utility-funded energy efficiency programs can play in assisting affordable multifamily housing owners in reducing the energy consumption of their properties. Following up on that paper, I have collaborated with the American Council for an

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[9] I also hold a seat on the state's Climate Protection and Green Economy Advisory Committee which advises the state on implementation of Global Warming Solutions Act, Chapter 298 of the Mass. Acts of 2008.
[10] Chapter 169 of the Mass. Acts of 2008.

Energy-Efficient Economy ("ACEEE") and the National Housing Trust to host stakeholder meetings in six states over the past year that focus specifically on barriers multifamily owners face in trying to access utility-funded energy efficiency programs, and how those barriers can be overcome. Those meetings have had representatives from gas and electric companies; non-profit agencies and for-profit companies that deliver utility-funded energy efficiency programs (under contract with the utilities); non-profit agencies that deliver WAP; high-level staff from the Department of Housing and Urban Development; staff of state utility commissions and state energy offices; and owners/managers of multifamily housing. I also made a presentation this past summer at the Multifamily Buildings 2011 conference, "Energy Efficiency in Multifamily Housing: Role of HUD & Utilities." My co-presenters were Wayne Waite, Manager for Field Energy and Climate Operations for the U.S. Department of Housing and Urban Development, and Nehemiah Stone of the Benningfield Group, author of "U.S. Multifamily Energy Efficiency Potential by 2020."

Q5: On whose behalf are you testifying?

A5: I am testifying on behalf of NCLC, National Housing Law Project (NHLP) and California Housing Partnership Corporation (CHPC).

Q6: Could you briefly describe the purpose of your testimony?

A6: Yes. I am providing comments in reply to testimony of other intervenor parties, specifically to the Multifamily Pilot Proposal offered by TELACU et al., so that the Commission may be able to more fully evaluate that proposal.

Q7: What specific comments do you have to offer?

A7: I would like to specifically comment on how other states have addressed the issue of designing utility-funded energy efficiency programs to best serve multifamily properties that house low-income people. As the reply testimony of Matt Schwartz notes, NCLC, NHLP and CHPC believe that a multifamily pilot is not needed and are concerned that going forward with a three-year pilot may unduly delay implementation of proven approaches that could simply be incorporated as part of ESAP. That reply testimony also notes that even if a pilot approach is adopted, the pilot appears too small and programmatically constrained. Lastly, Mr. Schwartz's reply testimony urges that ESAP be allowed to provide assistance for cost-effective centrally-provided heat and hot water systems in low-income multifamily buildings. In my comments, I will describe how leading programs across the country deal with these issues. I will describe programs from Massachusetts, Rhode Island, and New Jersey. At the outset, I note that these three states were rated, respectively, #1, #3, and #15 in the country in "The 2011 State Energy Efficiency Scorecard" ("Scorecard") produced by ACEEE. While rankings such as those produced by ACEEE are somewhat arbitrary, there is no doubt that these three states are seen as leaders in designing and implementing high-quality energy efficiency programs. Massachusetts and Rhode Island, in particular, were tied for second place out of all 50 states in the "Utility and Public Benefits Fund Efficiency Programs and Policies Score." Scorecard, Table ES-1, p. vi.

Q8: Can you describe relevant aspects of the Massachusetts Low Income Multifamily Program, including its development, implementation and results to date?

A8: Yes, I will. During 2009, and possibly earlier as well, various low-income multifamily stakeholders – public housing authorities, community development corporations, and community-based groups working with low-income tenant households – began voicing complaints that the utility-funded energy efficiency programs were not accessible to them in practice, even though under the formal program rules these buildings were certainly eligible to receive energy efficiency services. More specifically, multi-family building owners and advocates working with tenants in those properties voiced complaints that the properties could not afford to make the co-payments that the programs required – as the program rules (including rebate structures) were designed for commercial and market-rate property owners and managers with greater cash resources – and that it was too hard for the owners to figure out how to simultaneously – or even sequentially – access the different programs for which the owners/managers themselves and tenants might qualify. In essence, those who brought forward these concerns wanted no co-payments to be required for multifamily properties that house low-income tenants, and they wanted a single point of contact at the utility companies for accessing all available programs and benefits.

Over the first part of 2009, the network of agencies that were already delivering WAP and utility-funded low-income energy efficiency services, in conjunction with the utility companies, developed the Low Income Multifamily Energy Retrofits Program (LIMF Program). That program was launched during the summer of 2010, not as a pilot but as a full-blown component of the utility-funded energy efficiency programs that are mandated by law. Between the summer of 2010 and November 2011, this program has served 140 projects including 7,000 individual units. The number of units served in this program with electric-only measures (e.g., CFLs, etc.) is actually much larger. During that same period, approximately $10,000,000 was spent on the LIMF program.

The LIMF Program will provide assistance for cost-effective energy efficiency work including: repair or replacement of heating systems and hot water systems and/or their controls (including common systems); building envelope upgrades through air sealing and insulation; lighting upgrades; appliance upgrades; and ventilation upgrades.[11] Moreover, the program provides a single point of contact and a single web-based application,[12] even though the funding for the program comes from eight different Massachusetts investor-owned utilities, as well as a free energy audit. The program is flexible in its contracting model, in that the owner/manager can use its own general or sub-contractor, if qualified to do the work, or the LIMF 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, the income cut-off for the state's fuel assistance, WAP, and utility-funded low-income programs.

It is worth noting that Massachusetts has a population of approximately 6.5 million people, according to 2010 Census Bureau data,[13] and California has a population of approximately 37.3 million,[14] 5.7 times the Massachusetts population. Similarly, among the 2.8 million housing units in Massachusetts, about 585,000 are in multi-family buildings of five units or more. In California, about 3.1 million of the total 13.7 million housing units are in multi-family buildings; 5.4 times the number in Massachusetts.[15] Yet the proposed California pilot still pales in comparison to the Massachusetts LIMF Program in terms of potential households served, as well as in the scope of measures allowed. As the reply testimony of Matt Schwartz notes, it is not entirely clear from the multifamily pilot proposal filed by TELACU et al. if that

[11] http:leanmultifamily.org/programs/energy-efficiency work
[12] http://leanmultifamily.org/user/register
[13] http://quickfacts.census.gov/qfd/states/25000.html.
[14] http://quickfacts.census.gov/qfd/states/06000.html
[15] U.S. Census Bureau, 2010 American Community Survey, Table DP04.

pilot includes 8,500 distinct units, or instead 4,250 distinct units,[16] each of which may receive services from both ESAP and Energy Upgrade California. Assuming the pilot will serve 8,500 distinct units over the near-30-month period from July 1, 2012 to December 15, 2014, this is only slightly more than the Massachusetts LIMF Program has served in a little over a year. There appears little reason for California, which has at least 5 times as many multifamily units as Massachusetts, to propose a pilot that will assist far fewer households per year than the Massachusetts program has successfully done.

Massachusetts provides an example of a state that concluded its utility-funded energy efficiency programs – into which multifamily owners pay their fair share of the systems benefit charge – would not succeed in reaching an equitable share of affordable multifamily properties without removing the barrier that large co-pays (or, put another way, limited utility rebates) present. The Massachusetts program has succeeded in providing a true single point of contact for multifamily buildings, despite the participation and funding from eight different IOUs. The LIMF also provides its energy efficiency services at no cost for low-income multifamily properties, and includes as allowable measures cost-effective work on heating and hot water systems as well as building envelope insulation and air sealing. Massachusetts saw no need to pilot this program first, and every reason to move forward as quickly as possible once the multifamily stakeholders highlighted the barriers they faced from the previous program designs. This successful implementation calls into question the need for a two-and-one-half year pilot of fairly limited scale.

[16] See page 6 of the attachment to the testimony of James Hodges on behalf of TELACU et al. that describes the proposed pilot.

Q9: Could you discuss relevant aspects of the Rhode Island energy efficiency programs as they affect low-income multifamily properties?

A9: Yes. During the past year, I helped facilitate two meetings in Rhode Island that included a representative of National Grid, the utility that serves the entire state; representatives of the state's Energy Efficiency and Resource Management Council ("EERMC"); the state's housing finance agency; and a range of municipal and energy stakeholders. As a result, National Grid agreed to consider how its energy efficiency programs could be more accessible to affordable multifamily properties. In preparing this testimony, I conferred with a former National Grid ("NGRID") employee who attended those meetings and who oversaw, at the time, NGRID's Rhode Island programs, as well as a technical consultant to Rhode Island EERMC. They confirmed that in Rhode Island, owners of affordable multifamily housing can receive substantial assistance for approved energy efficiency measures. In electrically-heated buildings (of which there are relatively few in Rhode Island), NGRID pays for 100% of the cost of weatherization work (generally, insulation and air sealing). Lighting measures in common areas are also provided to owners at no cost. For gas-heated buildings, the utility provides a 75% rebate so that the owner is only responsible for 25% of the cost. Because natural gas energy efficiency budgets have recently been increasing significantly in Rhode Island, NGRID is more aggressively targeting gas-heated multifamily buildings, especially those housing low-income families. After the initial meetings that I described above, 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, but part of NGRID's general energy efficiency offerings.

Q10: Can you describe the Public Service Electric & Gas ("PSE&G") Company's Residential Multifamily Housing Program?

Q10: Yes. PSE&G launched it Multifamily Program in 2010, having developed it in collaboration with the New Jersey Housing and Mortgage Finance Agency.[17] The program offers multifamily owners/managers a free investment grade audit along with significant subsidies for all qualifying measures that have a simple payback period of 15 years or less. The program can reduce the payback period by 7 years, but not to less than two years; e.g., if a measure has a 9 year payback, the company can provide incentives to reduce that down to a 2-year simple payback; a payback period of 15 years can be reduced down to 8 years through direct incentives from PSE&G. Any remaining costs which would be borne by the owner/manager can be financed on the utility bill over a 10-year period with zero interest. Allowable measures include lighting, HVAC, humidification, ventilation, windows, doors, and motors. As stated by PSE&G in Attachment CH-#1, the "program is offered to residential multifamily housing" where utility services are provided by PSE&G. "High rise and low-rise facilities, affordable and market rate housing and urban rehabilitation projects identified by municipalities in PSE&G's service territory are eligible."

The program was initially targeted to affordable housing developments, and specifically to master metered affordable housing developments "to eliminate the split incentive market barrier as an issue during the initial implementation phase." In the second phase, the program was targeted at individually metered projects.

[17] I attach to my testimony as Exhibit CH-#1 a report, "The Collaborative Program Design and Delivery System Strategies Behind the Development, Regulatory Approval, and Successful Implementation of PSE&G's Residential Multifamily Housing Program", authored by PSE&G employees Elaine Bryant and Susan Lacey Ringhof, which more fully describes the PSE&G Multifamily Program.

By the 3rd quarter of 2010 – less than one year after the program was launched – 19 projects had already undergone their investment grade audits, and 4 more projects were in the process of having their audits completed. These 23 projects included 131 buildings with 4,484 rental units. PSE&G's rapid success in enrolling so many households in this program in less than a year suggests that a California pilot is not a necessary as a precondition to a successful multifamily program, and that even if the Commission believes a pilot is necessary, the proposal of TELACU et al. appears too small in scale.[18]

The PSE&G-authored paper attached as CH-#1 provides a thorough explanation of why the company sought to develop a program specifically for multifamily housing. That reasoning may help the Commission evaluate the pilot proposed by TELACU et al. and any alternative proposals offered in this docket. At the outset, the PSE&G paper noted that multifamily buildings are a "customer segment often financially unable to undertake energy efficiency improvements." PSE&G also recognized that by offering a targeted energy efficiency program to this sector, this could "relieve the continuous upward pressure on rental rates by reducing the operating costs associated with housing projects.[19] The run-up in energy prices, followed by the worst recession since the great depression, had forced building owners to defer basic maintenance in order to mitigate rental rate increases." Thus, targeted multifamily energy efficiency programs can help control operating costs thus allowing owners to catch up with deferred maintenance backlogs and postpone or moderate rent increases.

[18] California appears to have a least three times as many households living in multifamily units as New Jersey. U.S. Census Bureau "Quickfacts" for California and New Jersey, http://quickfacts.census.gov/qfd/states/06000.html and http://quickfacts.census.gov/qfd/states/34000.html.

[19] Elsewhere in the report, PSE&G notes that "multifamily housing units . . . typically face thin operating margins and constrained ability to increase rents which leads to deferred maintenance, poor building conditions, ongoing deterioration, and energy inefficiency which in turn erodes operating margins and the ability to retrofit an inefficient building."

Q11: Can you summarize your testimony?

A11: Yes. I have presented information regarding how utilities in other states provide energy efficiency services to affordable multifamily properties, sometimes at no cost to those owners, and noting that these programs routinely include central heating and hot water systems, common area and building shell measures. I have noted that the proposed multifamily pilot in this case appears small, given the size of California and in comparison to programs in other states. I have noted that other states already have implemented successful multifamily programs, without first going through a pilot phase, and have suggested that it is not essential for California to go through a pilot phase in order to introduce a new multifamily program that will better serve that sector. The states I have chosen to discuss are all considered national leaders in the design of energy efficiency programs and can therefore provide useful models for the Commission to consider.

Q12: Does that conclude your testimony?

Q12: Yes, it does.