

**KYLE PITSOR**

Vice President, Government Relations

April 8, 2015

Mr. Andrew McAllister  
Commissioner  
California Energy Commission  
1516 Ninth Street  
Sacramento, California 95814

Dear Commissioner McAllister,

On behalf of our members of the Lighting Systems Division of the National Electrical Manufacturers Association (NEMA) we would like to bring to your attention several concerns we have with the process and content of CEC's pre-rulemaking and rulemaking activities for the 2015 revision cycle of the California Building Energy Efficiency Regulations.

As you may know, NEMA is the trade association of choice for the electrical manufacturing industry. Founded in 1926 and headquartered near Washington, D.C., NEMA represents nearly 400 electrical and medical imaging manufacturers. Our combined industries account for more than 400,000 American jobs and more than 7,000 facilities across the U.S. Domestic production exceeds \$117 billion per year. With respect to Lighting and the State of California, NEMA members are responsible for over 900 lighting systems product jobs in California. Roughly half of these jobs are also involved in the manufacture and application of lighting controls.

We are very concerned that the Commission has lost touch with the concerns of industry and that the process has become overly influenced by and dependent on inputs from special interest groups which do not adequately take into account the full impact of these actions on industry or on California consumers. We are also very concerned that the rulemaking process has lost its openness and transparency of collaboration and content, to the detriment of the resulting Regulations.

Specific to the current Title 24 Part 6 Standard, our concern is that California Energy Commission (CEC) staff has not engaged the industry during the development in the same way as in previous code cycles, and as a result the proposed Standard may no longer serve the interests of the State of California. We outline several illustrations of this concern in the following paragraphs. Our goal with these comments is to constructively address maximizing public stakeholder participation in the CEC rules development and process improvement.

California Energy Commission

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### Collaboration:

In previous code cycles, the engagement of the electrical industry was constructive and helpful to the policy outcome. Industry was made aware of proposals, potential changes to the Standard, and stakeholder workshops well in advance. This awareness was not limited to routine list-service announcements, but rather involved frequent issue-specific teleconferences between industry and CEC staff, routine NEMA-CEC staff in-person meetings, and due concern for nationwide industry obligations in terms of scheduling these interactions. The CEC was more diligent about ensuring industry voices were heard. In the 2016 code cycle there has been much less collaboration; fewer stakeholder workshops, few proactive staff-industry meetings, and disregard for industry obligations for competing meetings. Our consensus opinion is that both the process and the substance of the proposed Standard have suffered from the reduced engagement of the CEC with the lighting industry, and for no apparent reason.

### Scheduling:

The CEC has historically been attentive to industry scheduling needs and set stakeholder workshops for days when the lighting industry was available to participate in these interactions. For inexplicable reasons, this changed with this code cycle. We note that the November 3, 2014 Stakeholder workshop was conducted on a day when CEC staff knew in advance that it was not feasible for the lighting industry to attend because of a major industry conference on the same day. Similarly, the March 2-3, 2015 hearings were conducted on days in direct conflict with EPA ENERGY STAR lighting program meetings.

We offer two suggestions to improve the process: First, it seems that hearing and workshop meeting dates are often dependent on the availability of the Rosenfeld room, and this fact seems to trump maximizing public participation. Surely there must be other web-capable rooms available to the CEC, and we recommend that staff identify and leverage them when an important stakeholder cannot participate. Second, because nationwide schedules for various industries can be nearly impossible to align, we suggest that workshops and hearings be scheduled by industry sector rather than focus strictly on code sections in terms of schedule. We believe all of these suggestions can be effectively implemented by a more proactive and transparent CEC staff process.

### Rulemaking Comment Periods and 45- and 15-Day Language Timing:

The 45-day language for the 2016 Buildings Standard was formally published on February 13, 2015 and the deadline for comments was set for March 30<sup>th</sup>, 2015. During the March 2-3rd rulemaking hearings CEC staff indicated verbally that comments must be received by March 17<sup>th</sup> if they were expected to have any tangible effect on the 15-day language. Adding to the challenge of commenting within the 45-day timeline on a combined 875 pages of proposed regulatory text, CEC staff published a document titled "Staff Intended Changes to Address Concerns With 45-Day Language" on February 24<sup>th</sup>, and then CEC staff presented entirely new language for some sections at the March 2-3 hearings. Arguably the "new" proposal language

given March 2<sup>nd</sup> and 3<sup>rd</sup> was intended to satisfy those “Intended Changes” but it was again, new language. These developments, in light of the verbally stated March 17<sup>th</sup> deadline left affected industries with a 14-day comment period. It follows that we appreciate very much that on March 27, 2015 the Commission issued a postponement of the 15-day language following identification of these and other concerns from many sectors. We recommend the Commission go one step further and undertake investigation of policy and procedural changes to prevent this from happening again. We are happy to offer our perspective and ideas collaboratively.

#### Transparency and Backsliding Concerns:

Recently NEMA learned privately that the April 10, 2015 CEC meeting listed on the general calendar as a “Meeting on the Implementation of 2013 Building Energy Efficiency Standards” will discuss in part lighting alterations and a potential relaxation of in-place regulatory requirements. The posted agenda for this meeting did not mention lighting retrofits, so industry had no idea that this could affect them. A quick read of the recently-received draft changes to the current regulation shows that lighting retrofit installations may not be required to include energy saving lighting control provisions anymore. We sympathized with the expressed frustration by lighting retrofit businesses during the March 2-3, 2015 hearings and their numerous written comments before and since, but we hope that the Commission will not eliminate this requirement without due technical investigation and process. The language proposed could result in backsliding to pre-2005 Standards levels, negating years of collaboration between the CEC and industry that yielded valuable energy savings. We hope the CEC has undertaken energy-efficiency and cost analysis on this and will publish it prior to the April 10 meeting so everyone involved can make informed comments and conclusions. The lighting industry will attend the April 10 meeting to provide as much technical expertise and industry perspective as possible to the discussion.

#### Regulatory Language Development and Revision:


NEMA and its members want to work as much as possible with the CEC toward achieving the goal of net zero energy residential buildings by 2020 and net zero energy commercial buildings by 2030. We share the CEC’s interest in energy-efficient buildings and appliances. However, we are disappointed by the lack of transparency during the current code cycle and have concerns that our involvement is being bypassed in favor of implementing proposals which have not been subjected to adequate stakeholder involvement. We recognize the difficulty of the rulemaking process for the CEC. New staff members have had to take over stalled projects, keep projects moving apace, and there have been changes in the Supervisor position for the office.

We are also concerned that the CASE process for development of efficiency requirements proposals has been degraded. Many current CASE reports, while lengthy and conveniently structured for CEC staff incorporation, are not fully informed from the industry perspective. One of our concerns expressed in the pending rulemaking about CASE studies is that the systems

and appliances evaluated were not representative and the information provided for analysis was not statistically significant. In these circumstances, we believe we have a justifiable concern about CEC staff reliance on these documents that need considerable improvement to form the basis of an informed public policy. We believe a greater number and frequency of staff workshops could allow staff to process disparate submissions collaboratively with stakeholders instead of privately, and thus reduce overall staff workload. We also suggest that the Commission undertake a review of the administrative requirements for content of CASE studies (or establish them) and make sure that when systems and appliances are investigated that an adequately representative number of systems/appliances are studied and the amount of data gathered for analysis be statistically significant.

Many of the below listed NEMA members will be in the Sacramento area for another meeting the first week of June. It is our hope to also set up a meeting with you to follow up on this letter then. NEMA staff will reach out to your staff in the coming weeks to arrange this. We look forward to working with you to improve the CEC's rulemaking process and stakeholder engagement. If you have any questions about the above please contact Alex Boesenberg of NEMA at 703-841-3268 or at [alex.boesenberg@nema.org](mailto:alex.boesenberg@nema.org) and please feel free to contact any of the listed co-signers below as well.

Signed:



Kyle Pitsor  
Vice President  
NEMA Government Relations



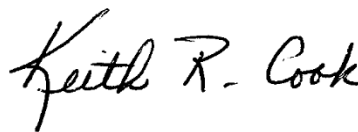
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