

Conflict of Interest PlanPolicy (Joint IOU Proposal⁺)

I. INTRODUCTION

This Conflict of Interest ~~Plan~~ (“PlanPolicy (“Policy”)”) applies to the energy efficiency (“EE”) program established by California Public Utilities Commission (“CPUC” or “Commission”) in ~~rulemaking~~Rulemaking (“R.”)-13-11-005 and subsequent proceedings (the “EE Proceeding”). The purpose of this PlanPolicy is to allow EE market participants who are potential providers of energy efficiency supplies, ~~or~~ services, or programs^[A1] under discussion at the California Energy Efficiency Coordinating Committee (“CAEECC”) to participate in and contribute to CAEECC-sponsored meetings ~~and in the implementation of the California EE Portfolio developed by the EE Proceeding~~ without creating a potential or actual conflict of interest.

This PlanPolicy provides transparency^[A2] through advance notice, public posting of meeting materials, and disclosure of implementer interests to enable stakeholders to monitor the potential influence of attendees on CAEECC meeting outcomes. ~~It seeks to avoid conflicts by maintaining Business Plan discussions at a high-level and by excluding potential Implementers from implementation plan discussions on that does not include specific program opportunities or matters such as vendor scoring, evaluation, and selection. This PlanPolicy should be interpreted in a manner consistent with the best interests of California’s energy customers in an equitable manner, prioritizing those actions that result in the best/highest public outcomes towards meeting California’s ZNE energy goals by driving down energy waste and consumption through energy efficiency in existing buildings~~^[A3].

~~H. UNDERLYING CONSIDERATIONS~~

II. BACKGROUND

A. Overview of the CAEECC

The CAEECC is a public forum for providing input into the development and management of the California EE Portfolio operated by Program Administrators²^[A4] under the auspices of the Commission. The CAEECC was conceived to facilitate public discussions between Program Administrators and other stakeholders on matters relating to the design and implementation of

⁺ ~~The IOUs seek guidance from CPUC staff regarding the inclusion of the yellow-highlighted text.~~

2/ The term “Program Administrators” refers to Pacific Gas and Electric Company (“PG&E”), San Diego Gas & Electric Company (“SDG&E”), Southern California Edison Company (“SCE”), Southern California Gas Company (“SoCalGas”) [jointly, the four investor-owned utilities (“IOUs”)] in California, Marin Clean Energy (“MCE”), and the two renewable energy networks, BayREN and SoCAL regional energy networks (“RENS”).

programs and activities that comprise the California EE portfolio.^{3/} CAEECC subcommittees address market scoping and strategies for meeting the energy savings needs of individual sectors. Subcommittee meetings are open to Market Actors as well as Implementers, representatives of local governments, and ~~other~~all members of the public. CAEECC ~~strives to allow~~will hold its meetings in a manner that minimizes the possibility for a conflict of interest and that allows Market Actors, including Implementers, to engage in CAEECC discussions to the fullest extent possible, ~~short~~^[A5] ~~of creating conditions that foster the inappropriate influence situations that the CPUC seeks to avoid.~~

The term “Market Actor” refers to an entity; or a parent, affiliate or subsidiary of such entity, that may provide or offer to provide for compensation equipment, devices, plans, knowledge, services or a combination of the foregoing, to produce energy savings ~~under~~pursuant to one or more of the EE Proceedings, including, but not limited to, the Rolling Portfolios authorized in D.15-10-026. Market Actors include Implementers.

An “Implementer” is an entity; or a parent, affiliate or subsidiary of such entity that (1) engages or may engage in the program design, implementation, marketing, and/or evaluation of an EE program conducted by a Program Administrator supervised by the CPUC, ~~which (2) either has not waived eligibility to receive funds from the provision of any product or service related to the CAEECC’s function, or plans to seek EE funds subject to the administration of~~which (2) may seek EE funds administered by a Program Administrator, and (3) is not a Program Administrator. An Implementer may financially benefit from choices made in the CAEECC and subsequent processes influenced by the CAEECC process. The term “Implementer” includes potential Implementers^[A6].

B. Identifying the Potential for a Conflict of Interest

Market Actors may participate in multiple functions of the CAEECC. For example, a Market Actor could provide input into a Business Plan and then become a Program Implementer who delivers a program in the Business Plan. A potential or actual conflict of interest arises if a Market Actor gains an unfair advantage by unduly or improperly influencing the design of a Business Plan or selection of an implementation plan to its own commercial advantage, ~~and then delivers a program or services related to a program to carry out the plan, that is not in the public’s best interest.~~

3/ CAEECC Members include the four IOUs, two RENs, a community choice aggregator, MCE, a representative of California Advanced Lighting Controls (Doug Avery), the California Energy Commission (“CEC”), City and County of San Francisco, Dept., of the Environment, a Local Government Program managed by PG&E, Sheet Metal Workers Union Local 104, the International Brotherhood of Electrical Workers Union, California (“IBEW”), the California Energy Efficiency Industry Council (“CEEIC”), consultants and implementers, LINKAS, an implementer, LG-NVC, a consultancy. CalCERT, CSE, the current Marketing, Education and Outreach (“ME&O”) administrator, the County of Santa Barbara, a representative of San Joaquin Valley, the Greenlining Institute, and the CPUC’s Office of Ratepayer Advocates.

This PlanPolicy seeks to minimize the risk that the participation of Market Actors in CAEECC-sponsored meetings could lead to conflicts of interest ~~that arise, for example, because of the possibility.~~ This Policy, as set forth in more detail below, ensures, among other things, that (1) ~~the~~CAEECC meetings do not provide confidential or other information that would allow certain Market Actors unique competitive advantages in future solicitations; (2) discussions do not create unreasonable bias in favor of a Market Actor's services, service offering, or products; nor limit Business Plan items to the prioritization of existing or past program inclusions that may preclude innovative alternatives from future consideration and (3) EE program ~~bid~~ solicitations for qualifications, call for proposals and/or bid ~~evaluation~~^[A7] criteria are discussed and adopted outside of the CAEECC proceedings. In addition to the adoption of this Policy, (1) the CAEECC charter will be updated to reflect the adoption of this Policy; and (2) a non-CAEECC forum will be established that unduly favor certain Market Actor(s) over others that could provide equal or better energy benefits.—is limited to non-financially interested participants to discuss specific Requests for Qualifications (RFQ), Requests for Proposals (RFP), Bids, criteria, evaluation and other such matters.

C. Preferred Approach Toward a Solution

Our shared strategy for preventing conflicts of interest ~~should continue~~continues to encourage maximum stakeholder participation ^[A8] in Business Plan development processes and input from Market Actors concerning products, market sectors, need, delivery systems, etc. to ~~best~~ inform the ~~selection~~development of implementation plans. Additionally, more outreach for more direct participation by varied stakeholders, especially by ALL public sector customers, as well as residential and commercial customers at all scales, public and private, would be ^[A9] ideal.

While CAEECC meetings are public forums, they should be moderated in a way that minimizes the potential for Market Actors in attendance to gain any unfair advantage ~~when competing to perform work by ensuring no potential bids solicitations will be~~ discussed at CAEECC-sponsored meetings ~~and discourages any participant from influencing Program Administrators' exercise of discretion to select Implementers.~~ This is consistent with the CPUC's conflict of interest standards for utility participation as a bidder-respondent in utility energy procurement solicitations: or energy efficiency peer review group activities. When procuring supply side resources; (including energy efficiency), the utility, with input from entities that do not have a financial interest in the procurement, establishes the performance or evaluation criteria for the resource being procured. If the utility infrastructure side submits a proposal into the solicitation, infrastructure personnel cannot participate in the adoption of selection criteria or process, such as scoring, ranking, deliberations, and selection.^{4/} The same would be the case here. Anything pertaining to specific RFQ's, RFPs, criteria, or weighting of such criteria will not be discussed

4/ See, CPUC Decision 07-12-052, pp.201-208.

at a CAEECC-sponsored meeting.

An open and transparent CAEECC ~~meeting process~~ should~~will~~ be adopted to allow Market Actors to contribute ideas for the development of Business Plans and implementation plan concepts ~~while making sure that they do not unduly influence the~~ as there will be no discussion of potential design for plans on which they intend to bid^[A10]. –However, if an Implementer ~~has influenced program design through its CAEECC activities such that the existence of bias in favor~~does violate the Conflict of selecting that Implementer is more likely than not~~Interest Policy~~, CAEECC will refer the issue to the CPUC Energy Division for appropriate resolution^[A11].

III. CONFLICT OF INTEREST ~~PLAN~~POLICY

A. The ~~CAEECC should adopt a Conflict of Interest Policy which includes the following provisions at a minimum:~~rules shall apply to all CAEECC-sponsored meetings:

1. Each ~~participant in the CAEECC agrees to avoid conduct intended to influence the design or implementation of energy efficiency Business Plans and the selection of implementation plans in a manner that confers an advantage that could directly lead to participant’s financial gain at the expense of the public good.~~Participant in the CAEECC agrees to review and abide by the CAEECC Conflict of Interest Policy. “Participant” includes the entity represented by each person attending a CAEECC meeting, in person, virtually, or ~~telephonically~~^[A12].
2. Each CAEECC ~~member,~~ ^[A13] other than a Program Administrator, must disclose whether it or a parent, affiliate, or subsidiary of such member, is currently an Implementer or is planning to become an Implementer.
3. Persons advocating goods or services will self-identify and provide a full disclosure that they are, or plan to be, providers of the goods or services that are potentially marketable to EE ~~programs~~^[A14].

B. Conflicts of interest will be ~~discouraged through~~minimized by establishing open meetings and transparent communications.

1. Allow full public participation in meetings by providing reasonable notice and accessibility. Notify parties on the R.13-11-005 service list and post on the internet.
2. The chair/facilitator of each committee, sector sub-committee, and working group will prepare and post an agenda that identifies each meeting as either

a Business Plan or implementation plan meeting after conferring with at least one of the CAEECC co-chairs.

3. ~~Document attendance and monitor participation in program design through a~~designated CAEECC representative will take detailed meeting minutes, which that provide details about each topic discussed, identifies each speaker, and monitors compliance with the Conflict of Interest Policy. This CAEECC representative shall asterisk/flag items that may represent a conflict of interest in the minutes. The meeting minutes shall be posted on an appropriate CAEECC's internet site-
~~-, www.caeecc.org, or any successor site, along with any Disclosure lists identifying names of individuals with orgs and intentions, as suggested above.-~~

- a. ~~Participants~~All participants by phone or webinar must identify themselves by name and company affiliation, if any, before speaking, as well as those in the room, so that callers also know who is speaking at any one time.

- ~~b. Subcommittee and working group meeting notes should attribute action proposals to specific participants.~~

- b. Meeting minutes should include a brief description of the content of each speaker's comments.

4. Allow participants to raise any perceived conflicts of interest to ~~Program Administrator staff~~CAEECC co-chairs, the meeting facilitator, or Energy Division Staff, either at the CAEECC meeting or within [15] days thereof^[A15].

C. CAEECC meetings will be limited to ~~high-level issues to minimize non-~~proprietary issues and topics that do not detail specific RFPs, criteria, evaluation, and other such matters to avoid potential influence by Market Actors.

1. Business Plans should not contain information that is so specific that it could advantage Market Actors who contribute to their development. Examples of information that should not be included are listed in the "Business Plan Guidance Document" dated May 2, 2016, prepared by Commission Staff.

2. CAEECC meetings will not be used as a forum by which Program Administrators establish or offer selection criteria, evaluation, scoring, and ranking, or discuss proposals and compile the “short list” of potential Implementers.
3. Discussions shall remain at a ~~high enough level~~level such that information can be exchanged to improve upon implementation plan proposals but that no potential or actual conflict of interest will arise.
4. No non-public information will be discussed by any party. Examples of non-public information include, but are not limited to the development and adoption of evaluation criteria, scoring and ranking methods, and selection criteria for implementation plans, and the deliberation on and selection of vendor-specific implementation plans.

~~5.~~ Implementer participation in the Program Administrators’ development of Implementation Plan concepts shall be limited to non-vendor specific terms, such as customer segment, geographic territory, goals, program mobilization process, ~~and timing.~~

5. ~~technology-type (but not specific brands or products), and timing. This information should support Program Administrators in providing future solicitations or bid documents that facilitate preparation of innovative and value-added proposals by all qualified Implementers.~~