

## Conflict of Interest Plan (Joint IOU Proposal)

### I. Introduction

This Conflict of Interest Plan (“Plan”) applies to the energy efficiency (“EE”) program established by California Public Utilities Commission (“CPUC” or “Commission”) in rulemaking (“R.”) 13-10-005 and subsequent proceedings (the “EE Proceeding”). The purpose of this Plan is to allow EE market participants, who are potential providers of energy efficiency supplies or services under discussion at the California Energy Efficiency Coordinating Committee (“CAEECC”), to participate in CAEECC-sponsored meetings and participate in the implementation process without creating a potential or actual conflict of interest.

This Plan provides transparency through advance notice, public posting of meeting materials, and the disclosure of implementer interests to enable stakeholders to monitor the influence of different attendees. It seeks to avoid conflicts by maintaining Business Plan discussions at a high level and by excluding potential Implementers from Implementation Plan discussions on matters such as vendor scoring, evaluation, and selection. This Plan should be implemented in a manner consistent with the best interests of California’s energy customers.

### II. Conflict of Interest Plan for the CAEECC

#### A. Overview of the CAEECC

The purpose of CAEECC is to create a public forum for providing input into the development and management of the California EE Portfolio operated by Program Administrators<sup>1/</sup> under the auspices of the Commission. The CAEECC was conceived to facilitate public discussions between Program Administrators and other stakeholders to discuss matters relating to the design and implementation of programs and activities that comprise the California EE portfolio.<sup>2/</sup> For that reason, CAEECC strives to allow stakeholders, including Implementers (as defined herein), to engage in CAEECC discussions to the extent possible, short of creating conditions that foster the inappropriate influence situations that the CPUC seeks to avoid. An “Implementer” is an

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1/ 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”).

2/ 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.

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 a Program Administrator, and (3) is not a Program Administrator. "Implementer" includes potential implementers.

#### B. Defining the Conflict of Interest

One of the primary purposes of the CAEECC is to design and support a CPUC-jurisdictional EE program that best serves the public interest. The CAEECC allows for the exchange of ideas and information through an integrated process, from Business Plan through Implementation Plan. CAEECC subcommittees address 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, etc. The term "Market Actor" refers to an entity, or a parent, affiliate or subsidiary of such entity, that may provide or offer to provide equipment, devices, plans, knowledge, services or a combination of the foregoing, for compensation, to produce energy savings under one or more of the Rolling Portfolios authorized in D.15-10-026. Market Actors include Implementers who may financially benefit from choices made in the CAEECC and subsequent processes influenced by the CAEECC process.

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. This creates a potential or actual conflict of interest, if a Market Actor gains an unfair advantage by helping to develop the Business Plan and then deliver a program, or services related to a program, to meet that Plan, at the expense of the public

This Plan seeks to minimize the risk that participation of Market Actors in CAEECC-sponsored meetings lead to conflicts of interest that could arise, for example, because (1) the meetings provide confidential or other information that would allow certain Market Actors unique competitive advantages in future solicitations; (2) discussions create unreasonable bias in favor of a Market Actor's services or products; and (3) Rolling Portfolio program evaluation criteria are adopted that unduly favor certain Market Actor(s) instead of others that could provide equal or better energy benefits.

#### C. Preferred Approach Toward a Solution

Our strategy for preventing conflicts of interest should continue to encourage maximum stakeholder participation in Business Plan development processes and input from Market Actors, to learn about products, market sectors, need, delivery systems, etc. to best inform the Implementation Plan. The ability to monitor Implementer participation at CAEECC meetings, including CAEECC subcommittee meetings, and to exclude them from meetings concerning specific implementation plan design and selection will allow Implementers to provide input into the Business Plan in a fair and unbiased manner, which will then not cause the Implementer or Market Actor to be precluded from bidding on portfolio implementation or evaluation contracts.

1. Open and Transparent Communication at CAEECC-sponsored meetings.

An open and transparent CAEECC meeting process should be adopted to allow Market Actors to contribute ideas for the development of Implementation Plans while making sure that they do not unduly influence the design for plans on which they intend to bid. The following ground rules should be in place for all CAEECC-sponsored meetings:

- a. No non-public information will be discussed.
  - b. A Business Plan should not contain information so specific that it could advantage or disadvantage any of the Market Actors who contributed to the Plan's development.
  - c. Market Actors may not unreasonably advocate programs that will benefit them.
  - d. Persons advocating goods or services will self-identify and provide full disclosure of their financial interest in such goods or services.
  - e. Each CAEECC member, other than Program Administrators, must disclose whether it or a parent, affiliate or subsidiary of the Program Administrator is currently an Implementer or is planning to become an Implementer.
2. Market Actors shall be excluded from discussions involving the Implementer selection process, consistent with other CPUC regulatory frameworks.

The Coordinating Committee must ensure that discussions in which Market Actors participate remain at a high enough level to ensure that the Market Actors will not gain any advantage when competing to perform work discussed at CAEECC meetings. Conversely, Market Actors must be excluded from discussions related to the 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 in utility energy procurement solicitations. When procuring supply side resources, the utility establishes the performance 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. Market Actors should be subject to similar rules here.

In summary:

- a. Discussions in which Market Actors participate shall remain at a high enough level that no potential or actual conflict of interest will arise
- b. Implementers must be excluded from CAEECC meetings at which Program Administrators establish or offer selection criteria, evaluation, scoring, and ranking and meetings at which Program Administrators compile the "short list" of potential Implementers.
- c. Market Actor participation in program design for Program Administrator-operated implementation plans will be limited to generic issues, such as types of technologies to address specific program needs, and sector-level budget and timing criteria, to avoid conferring an advantage on Implementers engaged in the CAEECC.

III. Conflict of Interest Plan

- A. The CAEECC should adopt a Conflict of Interest Policy which includes the following provisions at a minimum:
1. Each participant in the CAEECC agrees to avoid conduct intended to influence the design or implementation of energy efficiency business 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" includes the entity represented by each person attending a CAEECC meeting, in person, virtually, or telephonically.
  2. Each CAEECC member, **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 of their financial interest in the goods or services.
- B. Discourage conflicts of interest through group monitoring, 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. The agenda will provide notice of any reason why Implementers should not attend the meeting.
  3. Document attendance and monitor participation in program design through meeting minutes, which shall be posted on an appropriate internet site.
    - a. Participants by phone must identify themselves before speaking.
    - b. Subcommittee and working group meeting notes should attribute statements made in these meetings to specific participants.
  4. Allow participants to raise any perceived conflicts of interest to Program Administrator staff either at the CAEECC meeting **or within [15] days thereof.**

- C. Limit Business Plan content to high-level issues to minimize potential influence by Market Actors.

Business plans shall refer to broad categories of solutions, as opposed to vendor-specific technologies. Budgets will be stated at aggregated levels, rather than in terms of individual interventions. Business Plans will not refer to Implementers under current programs.

- D. Limit Implementer participation in CAEECC business to avoid conflicts of interest.

1. Allow Implementers, like all other interested parties, to participate in development of Business Plans. Since the Business Plans do not involve program delivery by third parties, Implementers may offer contributions to the development of Business Plans. However, Implementers may not engage in the commercial promotion of their goods or services at any CAEECC meeting or gathering.
2. Implementer participation in the PAs' development of implementation plans shall be limited to non-vendor specific terms, which include: customer segment, geographic territory, goals, program mobilization process, and timing. Program design elements for which individual Implementers may offer specialized services should not be specified to avoid giving an advantage to individual Implementers, such as participant identification or technology,
3. Exclude Implementers from CAEECC meetings at which Program Administrators develop and adopt evaluation criteria, scoring and ranking methods, and selection criteria for implementation plans. Exclude Implementers from any meetings at which Program Administrators evaluate and select implementation plans.
4. Exclude Implementers from meetings at which non-public information is being discussed. This situation is unlikely in CAEECC meetings; it is more likely to occur in subcommittee meetings. Participants in CAEECC subcommittee who have more specific information than the general public should not be able to participate in the solicitation.