

Initial Discussion Draft:

Proposed CAEECC Event Procedures Proposed in Response to May 2016 CPUC Energy Division COI Guidance Document

Reviewer Note:

The ED directed CAEECC and PA legal staff to respond to the ED COI Guidance Document in the form of a complete and specific plan. The document below is an initial proposal for how CAEECC meetings and events could be planned and managed to mitigate the risks of conflicts of interest. The next step is for PA legal staffs to consider these proposed procedures and rules to ensure consistency with related legal precedents and that ED concerns are adequately addressed from a legal perspective. In view of the direction provided by PA legal staffs, a final plan responsive to the ED request would be prepared and sent to ED for review.

Introduction

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 under the auspices of the California Public Utilities 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. For that reason, CAEECC strives to allow stakeholders, including Implementers, to engage in as much of the CAEECC discussions as is possible short of creating conditions that foster the inappropriate influence situations that the CPUC seeks to avoid.

Key Definitions:

For the purposes of this document, a stakeholder is considered to be an “Implementer” if they are:

- For-profit and non-profit entities, or
- A local governments and other special districts, but
- Not A California Investor Owned Utility, Regional energy networks (RENs), or Community Choice Aggregators (CCAs) that are Program Administrators

(unless such entity intends to contract with another Program Administrator for program implementation services outside the scope of its CPUC designated Program Administrator role);

And they engage in energy efficiency program design, implementation, marketing, and/or evaluation of California Program Administrator energy efficiency programs.

Additionally, an Implementer that is a potential contractor or subcontractor to a Program Administrator, and might carry out and/or design part or all of the scope of an Implementation Plan or a specific program that is discussed in a CAEECC meeting or event, are described below as potential PA contract counter-parties (Potential Counter-Parties).

[Key Risks Identified in COI Guidance Addressed in the Document](#)

The key risks that CAEECC seeks to avoid through the procedures and rules stated below are:

- Sponsoring events where attending Potential Counter-Parties might obtain confidential or other information not available to other Potential Counter-Parties that would allow them unique competitive advantage in future solicitations by PAs, and
- Sponsoring events where PAs may be inappropriately biased by Potential Counter-Parties' comments or documents in favor of Potential Counter-Parties' services or products.

[General Operating Principle](#)

CAEECC is explicitly conceived to facilitate stakeholder input and operate in a transparent unbiased way while minimizing dominance by any one interest group. To that end all CAEECC events shall be public meetings and all CAEECC events must be open to all interested stakeholders. Conversely, any event that would create an unacceptable conflict of interest if a potential counter-party attended should not be organized as a CAEECC event. Thus, if PAs or other subgroups of the CAEECC Coordinating Committee must meet to transact business in a way that conflicts with the operating principles described below, it should not be considered a CAEECC event.

The ED COI Guidance asserts that Coordinating Committee meetings are generally presumed to be low risk contexts and that the primary concern is with CAEECC subcommittee meetings and other CAEECC-sponsored standing or ad hoc working groups. To ensure proper operations are maintained consistent with the objectives of CAEECC, the following operating rules and procedures are set forth for all CAEECC events, but it is understood that the focus of compliance is on CAEECC subcommittees and other standing or ad hoc CAEECC working groups.

Operating Rules & Procedures

1. All CAEECC events, with the exception of CAEECC support team meetings, must be structured as public meetings.
2. All CAEECC meetings must be publicly noticed at least 72 hours prior to the event. Notice of the meeting and the agenda must be publicly available 24 hours per day for at least three full days prior to the event. The agenda must describe the subjects for discussion and expected actions to be taken.
3. All CAEECC events must have in attendance one or more representatives of at least two Program Administrators, with each representative being able to represent only one entity in a meeting or event.
4. All CAEECC events must have in attendance representatives of at least two unaffiliated, non-PA stakeholders in attendance (in person or via webcast and or telephone or teleconference).
5. All CAEECC subcommittees and standing and ad hoc working group events must be attended by a Facilitator, one PA and one non-PA subcommittee co-chair (or their proxy)
6. Meeting notes must be taken and posted on the CAEECC website. Meeting notes must include summaries of key issues addressed and substantive decisions made, if any, and attendees attending in person and remote attendees when feasible.

7. Presentations and other documents used during the event must be posted on the CAEECC website within three business days of the event if not in advance.
8. Sensitive, key solicitation terms, including scoring criteria, and the specific language of a pending or imminent solicitation for a PA RFP, RFQ or RFO that could significantly and uniquely benefit one Potential Counter-Party over others shall not be disclosed or discussed in a CAEECC event prior to the public release of such RFP. Contract length, contract value, market sector, key types of trade ally groups impacted, intervention strategy type, and measure category addressed do not constitute sensitive key solicitation terms and may be discussed in a CAEECC event where there are legitimate CAEECC purposes for discussing them.*
9. No discussion of specific solicitations may occur in a CAEECC event unless such topic is included in a timely posted agenda.
10. Unless otherwise requested by the CPUC, CAEECC events shall not allow planned or unplanned presentations by a Potential Counter-Party that explicitly pitches the Potential Counter-Party's products or services for a pending or future solicitation.
11. In no CAEECC events and meetings shall explicitly identified, Potential Counter-Parties' performance be discussed (good or bad).
12. Any work product or decision made at a nominal CAEECC event, which event is found to fall short of the requirements for a public meeting or otherwise violate rules and procedures set forth herein, shall not be allowed to be represented as a decision or work product of a CAEECC Committee, subcommittee or standing or ad hoc working group, and such work products or decisions shall be "demoted" to the status of a "stakeholder" proposal or position.
13. All CAEECC Agendas shall include a summary statement of the CAEECC Conflict of Interest Policy.

14. All CAEECC events shall begin with a live reading of the summary statement of CAEECC Conflict of Interest policy.
15. If and when any CC member or member of the public attending a CAEECC event becomes concerned that a CAEECC event is moving into a context not consistent with the policy rules, they are encouraged to interrupt the discussion and share their concern, providing the basis from which their concern stems. The meeting notes shall document this expression, including the person raising the issue, the organization they represent, and the nature and alleged basis for their concerns. The notes shall further document what actions were taken to address conflicts with operating policies.
16. If and when any CC member or member of the public attending a CAEECC event becomes concerned that either a Potential Counter-Party has obtained limited access information that would provide them a material, unique, competitive advantage by attendance at a meeting or that a PA representative is about to be or has been inappropriately influenced or biased by a Potential Counter-Party comment, presentation or document during a CAEECC event, they are encouraged to interrupt the discussion to share their concern and the basis upon which the concern is based. The nominal leaders of the CAEECC event (i.e., CAEECC Facilitator or co-chairs) shall consider the comments made and, if necessary, change the meeting topic as necessary. Meeting notes shall document the concerns raised, who raised them, their organization, and the specific bases for their allegation. Notice of this claim shall be forwarded to the CAEECC Co-chairs and Facilitator within one business day of the event by the nominal CAEECC event leader or their delegate. If one of the Co-chairs or Facilitators agree that a potential inappropriate biasing or influencing event has occurred, a summary of the situation will be sent to ED staff and the involved parties.

**Reviewer note...There may be a need to form an additional entity to review sensitive solicitation information when CAEECC isn't appropriate. Perhaps this could be the Independent Evaluator of solicitation processes that has been proposed by several CC members.*

CAEECC Conflict of Interest Policy Summary

TBD —needs to be short so that it can be read at each meeting and so it fits on agenda easily

Definitions for the Purposes of CAEECC processes

TBD -- to be completed in second drafting phase

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