

Conflict of Interest Plan (Joint IOU Proposal¹)

Commented [A1]: The overarching theme in NRDC's language edits include REMOVING potential conflicts by declaring that nothing related to RFPs, criteria, evaluation, eligibility, etc. will ever be discussed at the CAEECC. We can ensure this through the language in the charter (that we'll need to update) and the facilitator's role. The intent of NRDC's edits is to achieve the desired outcome without discouraging participation by implementers.

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.") 13-11-005 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 in the implementation of the California EE Portfolio developed by the EE Proceeding without creating a potential or actual conflict of interest.

This Plan provides transparency 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 that does not include specific program opportunities and by not holding excluding potential implementers from implementation plan discussions on matters such as vendor scoring, evaluation, and selection. This Plan should be interpreted in a manner consistent with the best interests of California's energy customers.

II. UNDERLYING CONSIDERATIONS

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 Administrators^{2/} 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 programs and activities that comprise the California EE portfolio.^{3/} CAEECC subcommittees

- ¹ 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").
- ^{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,

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, and other members of the public. CAEECC ~~strives will ensure no conditions create a potential conflict of interest in order~~ to allow Market Actors, including Implementers, to engage in CAEECC discussions to the fullest extent possible, ~~short of creating/avoiding~~ 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 one or more of 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 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.

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 influencing the design of a Business Plan or selection of an implementation plan to its own 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.

This Plan seeks to ~~minimize/remove~~ the risk that the participation of Market Actors in CAEECC-sponsored meetings could lead to conflicts of interest, ~~that arise, CAEECC meeting protocols will be updated/d to ensure, for example, because of the possibility that~~ (1) the 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 or products; and (3) EE program ~~bid~~ evaluation criteria are adopted ~~that unduly favor certain Market Actor(s) over others that could provide equal or better energy benefits—outside of CAEECC proceedings. This will be accomplished by three actions.~~

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.

~~(1) the CAEECC charter will be updated to reflect that such content is outside the scope of this group, (2) the facilitator will ensure that no such information is discussed at CAEECC meetings, and (3) there will be a non-CAEECC forum limited to non-financially interested participants to discuss specific Request for Proposals (RFP), criteria, evaluation, and other such matters.~~

Commented [A2]: Once we have a new PRG process we can reference it specifically.

C. Preferred Approach Toward a Solution

Our shared strategy for preventing conflicts of interest should continue to encourage maximum stakeholder participation 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.

Commented [A3]: Nothing is selected or finalized in the CAEECC meetings. That resides with the PAs.

While CAEECC meetings are public forums, they should be moderated in a way that ~~minimizes avoids~~ the potential for Market Actors in attendance to gain any unfair advantage ~~because by ensuring no potential work opportunities will be when competing to perform work~~ discussed at CAEECC 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 in utility energy procurement solicitations or energy efficiency peer review group activities. When procuring supply side resources ~~(including energy efficiency), the utility - with non-financially interested participant input-~~ 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.^{4/} The same would be the case here. Anything pertaining to specific Request for Proposals RFPs, criteria, or weighting of such criteria would not be discussed at the CAEECC.

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

III. CONFLICT OF INTEREST PLAN

- A. The CAEECC should adopt a Conflict of Interest Policy which includes the following provisions at a minimum:

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

CAEECC Conflict of Interest Plan v.2

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" 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 that they are, or plan to be, providers of the goods or services that are potentially marketable to EE programs.

B. Conflicts of interest will be ~~discouraged~~ avoided by establishing through 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~~ Document the discussion through meeting minutes, which shall be posted on an appropriate internet site.

a. ~~All P~~ participants, including by phone or webinar, must identify themselves before speaking.

b. ~~Subcommittee and working group meeting notes should attribute action proposals 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.

Commented [A4]: I'm not sure this is even feasible given the nearly 100 people that participate by webinar, not all of whom sign their names.

Commented [A5]: Strongly disagree with this as the intent of not attributing is to allow for a robust conversation. We could note if the comment came from an implementer (as we often note "co-chair" before a co-chair comment). However, preference is to set up the rest of the system as noted above so that this step is not necessary to avoid conflict.

Commented [A6]: Why PAs? I would think it should be Facilitator, Co-chair, and ED.

C. CAEECC meetings will be limited to ~~high-level non-proprietary~~ issues and topics that do not detail potential RFPs or the like to ~~minimize-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.

Commented [A7]: I presume this means that BP's should say “employ smart thermostat technologies” instead of “we plan to use nest thermostats.” Is that correct?

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 such that information can be exchanged to improve upon implementation plan proposals but that no potential or actual conflict of interest will arise.

Commented [A8]: I'm not clear it's “high level” when we get to implementation plans. Maybe “general” is a more accurate term? Should discuss.

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, technology options, and timing.

Commented [A9]: Presume we could discuss technology ideas (e.g., energy management systems) without getting too into specific pros/cons of a particular vendor's product.