California Charter Schools Association

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October 25, 2013

Mr. Robert B. Weisenmiller, Chair
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: Proposition 39: California Clean Energy Jobs Act – 2013 Program Implementation Draft Guidelines

Dear Chairman Weisenmiller:

On behalf of the California Charter Schools Association (CCSA), the professional and membership organization supporting California's 1,110 charter schools serving over a half million students, I am writing regarding your draft guidelines for the Proposition 39: Clean Energy Jobs Act program implementation.

We very much appreciate the time and effort the California Energy Commission (CEC) has put in to drafting the program guidelines and the many opportunities to provide input in the process. Because of your extensive outreach, many charter schools have been able to attend your sessions to learn more about this important program. It is from the feedback of many of our member schools that we derived the comments and concerns that we share with you in this letter.

Due to the rapid growth of charter public schools, we think it is necessary for programs that provide funding for public schools, such as the Clean Energy Jobs Act, to recognize what can be very unique facilities circumstances for charter schools. We were very pleased that SB 73 specifically includes charter schools for participation in this program, even those that operate in leased private facilities (Public Resources Code Sections 26225(c) and 26235(i)).

Charter school facility arrangements vary widely and include school-owned private facilities, private leases in either separate or shared commercial space, shared leases in portions of school district owned campuses, occupation of all or a part of a district-owned facilities under the provisions of Proposition 39 of 2000 (the "other" Proposition 39), and many combinations of the above. As such, program guidelines should be flexible enough to fully accommodate the participation of all charter schools in this program as intended in the authorizing statute.

We are concerned that these guidelines create a process that is far too complicated for many public schools, charters and traditional schools alike, to participate. We also believe that the draft guidelines create unauthorized barriers to entry that will prohibit hundreds of charter schools from being eligible. We have organized our comments below into some general concerns and then some more specific concerns and recommendations.

Purpose of Guidelines: PRC Section 26235, which authorizes the SEC guidelines, does not appear to require the establishment of eligibility criteria for program participation. The presumption in the law is that **all** LEAs should participate, with only a minimal application process and reporting and verification of reasonable project costs to meet the goals of the program. We are concerned that the draft guidelines establish new eligibility rules that will eliminate many charter schools from being eligible.

Administrative Complexity: We appreciate the need for SEC to document the outcomes of the program to ensure projects result in energy savings. However, the administrative burdens imposed by the draft guidelines may outweigh the purpose of the program to actually result in energy saving projects at school sites. We are concerned that the specific and detailed requirements will likely discourage many LEAs from even attempting to participate, even if they could meet the restrictive eligibility criteria of the draft guidelines. Most charter schools operate independently of school districts and lack a significant administrative infrastructure that would be necessary to participate in this program as envisioned in the draft guidelines. We strongly encourage revising the process to make it simpler and more closely aligned to only implement the law as written to eliminate entry barriers for small independent public charter schools.

Eligibility Restrictions: The suggestion that a school is only eligible if it meets specific documentation requirements related to separate utility meters and utility bills is not supported in the law. The law suggests that **all** LEAs are eligible, but must submit a project spending plan after some initial assessment.

The draft guidelines (page 5) establish specific eligibility requirements that are neither required nor authorized by law. Of particular concern are requirements that:

- The LEA pays the utility bills. The LEA is not eligible if the building owner pays the utility bills.
- A separate meter exists for the facility or building where the planning work will be applied or energy project(s) installed

As the CEC explores options for eligibility of charter public schools, we would ask for consideration of some flexibility in any final guidelines for facilities that do not have a separate meter and/or do not pay their utility bills separately from lease payments. As drafted, the guidelines would eliminate a several hundred charter school LEAs from participation:

1) Many independent charter schools operate in leased facilities. Section 26235(i) of the Public Resources Code explicitly allows participation of a school in a privately owned facility under specified conditions. However, the draft guidelines establish eligibility barriers that essentially prohibit any school in a leased facility from participating because renters rarely pay their utility bills directly. The SB 740 facility grant program funds over 300 charter schools in leased facilities (about one-third of all charter schools). Most renters negotiate utility costs as part of the lease (in part because it would be reimbursable under the 740 program). Prohibiting these schools from participation because "the building owner pays the utility bills" ignores the fact that these costs are still passed on to the renter as part of the lease costs. In essence, these schools *are* "paying the utility costs", just not the actual utility bill.

   We recommend amending the program guidelines to eliminate the requirement that the LEA must pay the utility bill to be eligible, and to also eliminate the specific

documentation requirement that a school have past utility bills. We encourage the SEC to consider more flexible alternatives to meeting this goal.

2) Many charter schools operate in a portion of a building or site, either through a separate private lease, or in a co-location of a schools district facility. Charter schools co-locating on a private or district facility do not have separate meters for utilities for the portion of a facility that they occupy. There is nothing in the code that prohibits participation of LEAs without separate meters, but this restriction in the guidelines would prohibit many charter schools from participating.

   We recommend amending the guidelines to eliminate the requirement for a separate meter and allow alternatives such as prorating costs among a shared facility.

Clarity and Flexibility for Schools on Co-located Sites: Several hundred charter schools are located in district facilities under the provisions of the "other" Proposition 39 (2000), or through other lease agreements with school districts. It is unlikely that any of these charter schools actually pay their utility bills directly. In addition, these schools frequently are co-located on a single site with a traditional district school program. The portion of the school facility occupied by the independent LEA charter school would not have a separate meter, so separate metering and billing information is not available. Nothing in the law requires or suggests that separate metering is required as a condition of participating in this program. If the CEC believes collection of usage information is required by law, and necessary for every applicant, we suggest offering significant flexibility for LEAs to document its energy cost and usage, such as prorating energy cost of usage data by space usage, or other forms of estimation.

We further request clarity and additional flexibility on the designation of project and eligible costs for separate charter and district LEAs that operate on a single site. In some cases, a joint application will be desirable and appropriate. In other cases, the district and co-located charter school LEA might have differing priorities for the site improvements. In fact, it is possible that a district may not prioritize any improvements at a school site for which a charter school is co-located. If a district chooses not to include a school site in its plan, the charter school sharing that site should not be prevented from participating.

We recommend revising the guidelines to allow, but not require, a joint application for co-located schools, and to allow separate applications even if a charter school LEA is located on a shared district site.

Greater Flexibility for New and Moving Schools: Page 11 of the draft guidelines offers some consideration for new charter schools to participate in the program. We appreciate the CECs acknowledgement that new charter schools face unique circumstance related to this program. We would like to encourage the CEC to consider additional flexibilities for new schools, and also to include existing schools that move school between school years. Many charter schools are forced to move to accommodate pupil growth or due to other factors. New and moving schools will not necessarily have access to prior facility utility data. In addition, such data, even if available, may be irrelevant to the use of the facility as a public charter school. We would urge the CEC to consider waiving any requirements related to prior usage for any school, whether new or continuing, that is relocating to a new school site.

Energy Plan Threshold: Page 20 of the guidelines provides options for the Energy Expenditure Plans. Options 1-3 are available to schools based on an award level of $50,000 or less. We

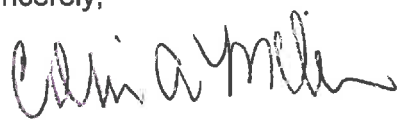
would recommend that this be amended to reflect the funding tiers identified on page 7, rather than specific dollar amounts. Because actual grant awards may vary slightly each year based on free and reduced priced meal allocations, schools on the margin could be above or below a specific dollar threshold in any a particular year. By aligning the reporting with the tier designation (i.e. tiers 1 and 2) rather than the actual award amounts, grantees will have greater clarity on which rule applies, and have consistent reporting throughout the grant.

Consortia: Another issue we would like to suggest is providing the opportunity for LEAs to establish consortia for receiving and using Prop 39 funds. A lead LEA could perform all required actions on behalf of several grantees, similar to how a school district would operate. Such a structure would allow charter school organizations to pool resources and allocate among groups of schools within their organization based on their aggregate priorities.

Retroactivity: Page 29 of the guidelines prohibit a project from qualifying until *after* the guidelines are approved. We request that the guidelines be amended to allow, for the current year, projects to be funded based on costs as of July 1 2013, if the project meets the guidelines of eligibility ultimately approved in the guidelines. Because the program was authorized for the start of the 2013-14 fiscal year, we believe this retroactivity is allowable and may be appropriate in some cases. We are not aware of any provision in the statute that requires project approval before expenditures may be incurred. There are a number of newer charter schools that acquired or renovated a facility this summer for use during the 2013-14 school year. If they did improvements during 2013-14 that meet program criteria, they should be able to apply these funds retroactively to costs incurred from the start of the fiscal year.

We thank you for the opportunity to participate in this process and share our concerns. We look forward to working with you to ensure a program that improves energy efficiency for all of California's public schools. If you have any further questions or if CCSA can be of any assistance in implementing this program, please feel free to contact me by email at: cmiller@calcharters.org or by phone at: (916) 448-0995 ext. 303.

Sincerely,



Colin A. Miller,
Vice President, Policy
California Charter Schools Association