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California Energy Commission
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California Energy Commission
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RE: Docket # 13-CCEJA-1: Comments on the Proposition 39 Program Implementation Draft Guidelines

Commissioners Weisenmiller and McAllister:

Advanced Energy Economy (AEE) is a national organization of businesses who are making the global energy system more secure, clean, and affordable. Member companies represent a wide range of technologies from energy efficiency, demand response, renewable energy, natural gas, small-head hydro, electric vehicles, smart grids, and many more.

We appreciate the opportunity to provide input on the Proposition 39 Program Implementation Draft Guidelines (guidelines). As you know, the public voted for the original measure with the understanding that schools will achieve real energy savings and that the state will provide sufficient oversight of the program. **From AEE's standpoint, it is critical that the voters' mandate be carried out without delay and with maximum effectiveness – capturing energy savings from schools and other public buildings, putting Californians to work implementing these energy improvements, and freeing up resources that can be devoted to classrooms across the state.** The guidelines present an important first step. School districts around the state are looking to these guidelines as they develop project expenditure plans. As you know, many of these districts lack sufficient staff and resources to evaluate proposals on their own. A wide range of energy businesses, including our member companies, are also prepared to work with schools to ensure they are achieving maximum energy savings and deploying the best solutions on-site. Clear guidelines and requirements will help shape a strong program that achieves the goals envisioned by the initiative.

To date, AEE has voiced the need for cost-effective implementation, which maximizes energy efficiency and advanced energy deployment. We offer the following comments and recommendations in response to specific sections in the draft guidelines:

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Page 8: Energy Planning Reservation Option

The guidelines mention that the energy planning reservation may be spent on two sets of activities:

1) *Screening and energy audits (85%)*
2) *Prop 39 program assistance. (15%)*

Recommendation: We recommend eliminating the 85%/15% split to allow for greater flexibility with the limited funds available for planning. This will allow Local Educational Agencies (LEAs) the ability to invest in all necessary technical analysis and benchmarking activities.

Page 11: Large Expenditure Plan Award Requirement (Tier 4)

The guidelines reference Public Resources Code section 26233(b)(3) indicating that LEAs that receive over one million dollars ($1,000,000) must spend at least 50% of the funds for projects larger than $250,000. The guidelines then go on to describe a large expenditure plan project as "a project at a school site" whose project cost totals more than $250,000.

Recommendation: The definition of a project being a single school site significantly limits a district's ability to make comprehensive, smart and fiscally responsible energy efficiency improvement decisions. The commission should consider the definition of a project to be similar as defined on page 24, that an "eligible project" is the combined projects approved under a single energy expenditure plan. This will align better with the Energy Expenditure Plan Options outlined on page 20 of the guidelines for those entities receiving $50,001 or greater in awards.

Page 11: Leverage Award Funding

The guidelines describe an LEA's ability to pursue other programs and incentives to leverage Prop 39 funds.

Recommendation: AEE appreciates the fact that the guidelines include discussion of leveraging additional sources of capital, both on a project basis and across the Prop 39 implementation program as a whole. Since the passage of Prop 39 and throughout the Legislature's consideration of implementing legislation, AEE actively advocated for approaches to Prop 39 implementation that would expand the total pool of capital available for project deployment. In the 2013-14 budget, $28 million was appropriated "for the purpose of low-interest and no-interest revolving loans and loan loss reserves for eligible projects and technical assistance." Public Resources Code Section 26227(a)(1).

In implementing this provision, AEE encourages the Commission to better encourage the leveraging of both public and private sources of capital. In its discussion of "Leveraging Award Funding," the guidelines include reference to Section 26235(g) of the Public Resources Code, which states, "This section shall not affect the eligibility of any eligible entity awarded a grant pursuant to this section to receive other incentives available from federal, state, and local governments or from public utilities ***or other sources*** or to leverage the grant from this section with any other incentive." Draft Guidelines, pg. 11 (emphasis added). In identifying other potential sources of project capital, however, the guidelines only include other *public* programs. AEE suggests that the guidelines be expanded to include explicit reference to *private* dollars as an acceptable form of leveraging capital. For example, use of power purchase agreements (PPAs) to procure renewable distributed generation allows schools to leverage the federal Investment Tax Credit and accelerated depreciation that would otherwise be unavailable to schools. Such a reference would better reflect the statutory language that encourages all sources of additional capital as eligible for leveraging Prop 39 dollars, helping to stretch the funds available and expand the overall impact of the program.

Page 15: Step 4: Sequencing of Facility Improvements
The guidelines offer the following sequencing approach in selecting projects:
1) First, maximize energy efficiency for example, installing daylighting or energy management systems.
2) Next, consider clean on-site energy generation (for example, solar, photovoltaic [PV], solar water heating, wind or an efficient biogas fueled fuel cell or combined heat and power system).
3) Finally, consider nonrenewable projects (such as an efficient natural gas fueled fuel cell or combined heat and power project system).

Recommendation: We believe the intent of Prop 39 includes a wide variety of energy efficiency and advanced energy measures. This includes retrofits as well as demand response measures that impact behavior. We recommend "demand-side solutions" be included in the guidelines text to better clarify their role in maximizing energy savings.

AEE also recommends allowing all energy upgrades to be considered on a cumulative basis for the purposes of achieving the required Savings to investment ratio (SIR). The current guidelines create severe limitations on the impact that can be made on a particular school with significant need. Modifying the definition of a project to align with the Energy Expenditure Plan Options outlined on page 20 of the guidelines for those entities receiving $50,001 or greater as well as the definition of "eligible project" on page 24 as being the combined projects approved under a single energy expenditure plan will provide greater flexibility and increased likelihood of meeting of the sustainability objectives intended under Prop 39. This will allow for early Priority 1 measures to balance the higher cost investments that are needed by many districts.

Page 17-19: Step 5: Energy Project Identification
In this section, CEC outlines the 3 options for performing energy surveys and energy audits.

Recommendation: On page 18, in reference to the use of data analytics, the guidelines state "an LEA must provide documentation of prior technical validation of the technology by a local utility." This section requires additional clarity and should define what specific functions a virtual audit should provide. More detail and a set of minimum criteria will help guide LEAs as they make decisions. In addition, many of the state's utilities are already working with vendors delivering virtual energy audits. To ensure virtual energy audit vendors meet the minimum criteria, we should leverage this existing knowledge instead of crafting a new method for validation.

Page 19: Step 6: Cost-Effectiveness Determination

The Guidelines state that an individual project may have a SIR lower then 1.05, but the portfolio of bundled projects at each individual school site, submitted in one energy expenditure plan, must achieve a minimum SIR of 1.05.

Recommendation: Again, clarifying the definition of a project so that it aligns with the "eligible project" description on page 24 will provide greater flexibility for the districts to drive more energy efficiency work out of the prop 39 funds while reducing expenses associated with redundant activities.

Page 26: Step 8: Energy Savings Reporting Requirements
The guidelines outline 4 different methods to report project level energy savings.

A. Utility Incentive Completion Report
B. Energy Commission Energy Savings Calculators Report
C. LEA's Own M&V Report
D. Third-party M&V report

Recommendation: The guidelines do not specify whether LEAs can apply Prop 39 funds to fulfill requirements for reporting project-level energy savings. We recommend additional clarity on this point since this is critical for schools and the state to better understand the impact of specific projects on energy savings in each district.

Page 29: Energy Conservation Assistance Act (ECAA)
Chapter 3 describes ECAA Loan Program and terms to qualify.

Recommendation: In addition to promoting leverage on a project-by-project basis, AEE also recommends that the entire Prop 39 implementation program be structured so as to attract and leverage outside capital. Such an approach was specifically envisioned in the implementing legislation, which allows for the $28 million to be deposited in the in the Education Subaccount of the State Energy Conservation Assistance Account to be used for both loans and loan loss reserves, as well as technical assistance. Public Resources Code Section 26227(a)(1). In its discussion of how these funds can be utilized, however, the guidelines include only publicly administered loans, ignoring the statutory encouragement of credit enhancements. Such an approach misses the opportunity to engage private lenders in providing capital for eligible projects under Prop 39, and limits the leverage available to the program as a whole.

In discussions with leading finance experts, AEE has been told that a loan loss reserve of between 10-15% of total loan value would be sufficient to attract participation from private lenders. Under that scenario, the total capital available for lending would grow from $26.2 million if administered directly by ECAA to between $175-262 million if used as a credit enhancement. Furthermore, while the ECAA loans described in the guidelines would recycle only once every 20 years, private lenders would be incented to pool such loans and sell them into the secondary markets, allowing for much swifter recapitalization of the loan pool.

Importantly, this ability to access the secondary markets has to potential to unlock exponential growth in the total capital available for Prop 39 projects. To date, secondary market conformance has delayed the implementation of many energy efficiency financing programs. As we see from residential solar, once the secondary market is convinced of the risk/return ratio, capital floods in. Schools need this too, and structuring the Prop 39 lending program in partnership with private lenders with the explicit objective of accessing secondary markets can help accelerate this process.

Because such a private sector-focused approach to Prop 39 implementation requires sophisticated engagement with market participants, AEE further encourages the Commission to partner with the California Alternative Energy and Alternative Transportation Financing Authority (CAEATFA) in the State Treasurer's Office in implementing the finance programs under Prop 39. Such an approach would mirror the approach recently taken by the California Public Utilities Commission in launching its energy efficiency financing pilot programs, and would help ensure coordination across agencies for effective program implementation consistent with the statutory language allowing for loan loss reserves and public private financing partnerships.

Finally, AEE encourages the Commission to clarify the eligibility requirements for ECAA loans. In its description of eligible projects for funding under the ECAA-Ed program, the guidelines state that, among other things, "[t]he term of the loan may not exceed the useful life of the loan-funded equipment or the lease term of the building in which the loan-funded equipment will be installed." Draft Guidelines, pg. 30. Such a requirement, however, would seem to foreclose power purchase agreements (PPAs) for on-site solar generation and other activities included in the language of Prop 39. AEE encourages the Commission to amend the wording of this provision to remove this ambiguity and clarify that such PPA arrangements are eligible for loan funding under Prop 39. We also ask that the guidelines make clear that schools can finance PPAs using Prop 39 award grants as well.

We thank you for soliciting our feedback in advance of finalizing the program implementation guidelines this year. We look forward to engaging further and are happy to provide additional comment and clarification as needed. Feel free to contact us at (415) 799-3718 with any questions. AEE appreciates your leadership on this effort.

Sincerely,

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