SCHOOL ENERGY COALITION

California Energy Commission
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October 15, 2014

The Honorable Andrew McAllister
Commissioner
California Energy Commission
1516 Ninth Street, MS-29
Sacramento, CA 95814

Dear Commissioner McAllister:

On behalf of the School Energy Coalition (SEC), an organization made up of schools, community colleges, school construction and energy consultants focused on energy efficiency and renewable generation projects for California's K-14 students, I am writing to share our thoughts and concerns regarding the California Energy Commission's (CEC) Draft December 2014 Proposition 39: California Clean Energy Jobs Act - 2015 Program Implementation Guidelines.

Since the CEC Proposition 39 Guidelines were approved on December 2013, SEC has worked to assist K-14 districts to stay up-to-date on the information changes and meeting the requirements for Energy Expenditure Plan (EEP) approval. To that end, SEC has held over nine workshops and two webinars addressing energy issues of importance to schools, most with a Proposition 39 focus. We have also surveyed our schools specifically regarding the Proposition 39 program and the challenges schools are facing in meeting the requirements for approval.

Overall, schools statewide have appreciated the flexibility in the energy project funding program and appreciate that the Energy Commission has listened to Local Education Agencies (LEA) concerns, making adjustments where needed and warranted over the past year, as individual schools have moved through the approval process. Schools are now strongly interested in knowing what the proposed rules may bring especially if they are already in process – and prior to the Draft's approval on December 2014.

SEC would like to offer the following additional input in response to the proposed language and to identify areas that remain of concern:

Definition of Cost-Effectiveness
We greatly appreciate and support the LEA-wide ability to bundle projects in an energy plan. After gathering data and benchmarking their sites, the required Savings-to-Investment Ratio (SIR) of 1.05 is the most challenging part of the approval process for schools.

We would also suggest the following:

- That schools may apply the SIR over multiple years if they have a multi-year plan.
- Please clarify how planning funds that rollover to the actual project are accounted for in the SIR.

Proposed Language in the "Contracts" Section of the Guidelines

SEC is very concerned about the proposed language in the "Contracts" section (p. 36), which adds language from the Public Contract Code to the Guidelines:

"As stated above in PRC 26235(c), "A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter." This applies to all Proposition 39 program award funding, including award funding for energy planning activities. *However, pursuant to Public Contract Code (PCC) Section 20111, any public projects involving an expenditure under $15,000 do not need to be competitively bid." (emphasis added)*

The language makes it appear that Prop 39 projects under $15,000 are also to be completely free from competitive bidding – and that is confusing give the overarching language in Proposition 39 statute, on "non-sole source."

Furthermore, because competitive bidding (low bid) is different from "non-sole source," we wonder if it might conversely mean that *all other* projects over $15,000 must be competitively bid.

We would strongly recommend that the last sentence "*However, pursuant to Public Contract Code (PCC) Section 20111, any public projects involving an expenditure under $15,000 do not need to be competitively bid."*- be rejected and removed from the Guidelines.

Change of Project Cost Definition to not include Design:

"Design" was removed from the definition of Project Cost for the SIR calculation. This means that only the Construction costs are considered in the equation. Please clarify whether this means that only the construction costs may be included in the funding request for each project as well.

Design costs (and other project "soft costs" such as IOR, testing, construction management, etc.) are already not allowable Planning Funds Expenditures.

Therefore, it appears that these costs cannot be funded by Proposition 39 and LEAs must provide other funds to cover these costs on projects. Is this correct? If so, this may be problematic for some LEAs with limited resources or no available facility funding.

In addition to these concerns regarding the proposed Draft language, SEC respectfully requests that the Commission consider the following issues that remain of some concern to schools with the current Proposition 39 Program:

Credit for Recent Efficiency Installations

- Many schools have already been proactive on energy efficiency and have installed new lighting and sensors over the past few years. We would suggest some consideration for energy installations and savings that have occurred within the past three years prior to Guideline Approval.
- In some cases LEAs have completed extensive energy efficiency and renewable energy projects to the degree that they do not have any upgrades left to complete that would meet the SIR requirements. We suggest that there be a process identified for allowing LEAs in this situation to fund projects of a lesser SIR than 1.05.

Solar

- Schools would support more options to do solar projects with Proposition 39 funding should they choose to do this, especially when efficiency measures have been already installed.
- SEC supports suggestions to change the way the SIR is calculated for Power Purchase Agreements (PPAs) to allow these projects to better go forward under the Proposition 39 Program.
- SEC supports revisions to the solar calculator that better match industry standards for such variables as solar panel life span, inverter life span and solar panel degradation.

Proposition Funding Relationships between LEAs

- Clarify how LEAs may show that funding has been pooled for the purposes of the Program, for example an energy manager or other planning fund uses. Is a Memorandum of Understanding (MOU) or other type of documentation required?
- Existing relationships between LEAs. How might Charter Schools document compensation to school districts, or vice versa, with Prop 39 funding for energy assistance to meet program requirements?
- Please clarify whether sole source language applies to work provided between COEs or Districts and charters.
- There are some charter schools that do not have school facilities, but operate online. How are these funds to be allocated? Will those funds revert back into the fund if they are not accessed – or might that funding be accessed by the chartering LEA?

Correlating with Other Energy Programs

- Schools have other state energy programs and regulations they must comply with. It would be useful to have guidance on how schools may integrate the changes to the state's Green Codes and Title 24 requirements for schools with Proposition 39 projects.
- Due to the recent 2013 California Energy Code incentive, programs across the state are in the process of being re-calculated to align with the new code requirements. In some cases these changes in incentive calculations may have a significant impact on SIR calculations. However, the updated incentive calculations are not expected to be available until early in 2015. What will be the requirements for LEAs to update incentive calculations in their SIR once the programs are updated?

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Disapproval Process

- SEC appreciates that CEC staff has stated in outreach meetings that the goal is not to disapprove proposals, but to work with LEAs to move toward approval. However, the specificity of the "Disapproval Process" has raised some concerns with our members. It appears that once you move to this correction and resubmission docket it is a very formal and bureaucratic process. Given that a plan can be returned and for resubmission, is a disapproval process even necessary?

We appreciate the ability to share our concerns with you. Please do not hesitate to contact me (916.441.3300 or aferrera@m-w-h.com) with any questions regarding the information contained in this letter.

Sincerely,

Anna Ferrera
Executive Director

AF:ad

c: Robert B. Weisenmiller, Ph.D., Commissioner
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Janea A. Scott, Commissioner
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