

DOCKETED

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Submitted On: 8/2/2024
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July 26 Request re CalSHAPE Ventilation Program Applications and Grant Processing, with New Signatures Added August 1 Included

Note: The Office of the Public Advisor recommended submitting to the docket the July 26, 2024 request with the new signatures added on August 1, 2024 included.

Additional submitted attachment is included below.



July 26, 2024 (with new signatures added August 1, 2024)

California Energy Commission
 Docket No. 20-RENEW-01
 715 P Street
 Sacramento, CA 95814

Re: Request to Reconsider June 28, 2024 Notice of Updated Deadline for the CalSHAPE Ventilation Program and Reopen Applications, and to Continue Grant Agreement Processing through October 31, 2024, as Noticed on May 17, 2024

Dear Commissioners and Staff,

The California Schools Healthy Air, Plumbing, and Efficiency (CalSHAPE) Ventilation Program was created to disperse vital funds needed to “save energy,” “advance high-quality jobs,” and “protect the health, safety, and ability to learn for California’s school children and the health of California’s teachers.” (Public Utilities Code Section 1600.)

Unfortunately, these goals were hindered when late in the afternoon of Friday, June 28, the program’s steward, the California Energy Commission (CEC), abruptly moved up by

30 days the deadline for Local Educational Agencies (LEAs) to apply for the last round of Ventilation Program funding from July 31, to the next business day, Monday, July 1.

This change and related actions by the CEC have left schools and jobs in limbo at the same time as Californians have faced record-breaking extreme heat waves, California wildfires have already burned five times the average acreage for this time of year, and scientists have warned that the H5N1 virus could cause a new influenza pandemic.

This is not the way and now is not the time for the CEC to limit access to existing funds gathered for the purpose of ensuring the well-functioning HVAC systems needed for California schools to remain open and for students and teachers to breathe healthy air.

In the interest of fairness, certainty, and transparency, and to better effect the critical goals of the Ventilation Program, we respectfully request that the CEC:

- Reconsider its June 28, 2024 Notice of Updated Deadline for the Ventilation Program and reopen the Funding Round Five open application period for an additional 30 days;
- Continue to expeditiously process grant agreements through October 31, 2024, in accordance with the grant processing deadline noticed on May 17, 2024; **and**
- At a minimum, make any decision shortening Ventilation Program deadlines and changing processing procedures for applications and grant agreements at a publicly noticed meeting with no fewer than 15 days' public notice, consistent with the *CalSHAPE Ventilation Program Guidelines, Fifth Edition (Program Guidelines)*.

Background and Reasons for Request appear below.

Thank you for your consideration.

Sincerely yours,

JuNelle Harris, Co-Founder
California Alliance for Clean Air in Schools

Dion Abril, Executive Administrator
SMART Western States Council

Tristan Brown, Legislative Director
CFT – A Union of Educators & Classified Professionals, AFT, AFL-CIO

Shereen Walter, President
California State PTA

Nancy Chaires Espinoza, Executive Director
School Energy Coalition

Ian Padilla, Legislative Advocate
Coalition for Adequate School Housing (CASH)

Jonathan Klein, CEO and co-founder
UndauntedK12

Andra Yeghoian, Chief Innovation Officer
Ten Strands

Vanessa Forsythe, Policy Committee Co-Chair
California Nurses for Environmental Health and Justice

Amanda Millstein, Medical Doctor, Co-Founder
Climate Health Now

Joel Ervice, Associate Director
Regional Asthma Management & Prevention

Tracey Brieger, Deputy Director
Jobs with Justice San Francisco

Sam Fishman, Sustainability and Resilience Policy Manager
SPUR

Mackenzie Wieser, CEO
Sacramento Splash

Leslie Alden, Executive Director
Act Now Bay Area

Richard Burke, Founder, Chapter Leader
Elders Climate Action (ECA) Southern California (SoCal) Chapter

Todd Weber, Volunteer, Chapter Co-Leader
Elders Climate Action (ECA) Northern California (NorCal) Chapter

Cheryl Weiden, Steering Committee Member
350 Silicon Valley

Serena Pelka, Policy Advocate
Climate Action Campaign

Angela Evans, Director
Menlo Spark

Janet Perlman, Physician

Mary Ruppenthal, Education Market Sector Leader
HED

New Signatures Added August 1, 2024

Ericka Flores, Clean Energy & Equity Advocate
Natural Resources Defense Council (NRDC)

Zach Pierce, Director, State & Regional Policy
Rewiring America

Alexa Norstad, Executive Director
Center for Ecoliteracy

Linda Hutchins-Knowles, Co-Founder and Team Coordinator
Mothers Out Front Silicon Valley

Lauren Weston, Executive Director
Acterra: Action for a Healthy Planet

cc: Chair David Hochschild, chair.hochschild@energy.ca.gov
Vice-Chair Siva Gunda, commissionergunda@energy.ca.gov
Commissioner Noemí Gallardo, commissionergallardo@energy.ca.gov
Commissioner Andrew McAllister, commissionermcallister@energy.ca.gov
Commissioner Patty Monahan, commissionermonahan@energy.ca.gov
Program Manager Theresa Daniels, theresa.daniels@energy.ca.gov
CalSHAPE Program Team, calshape@energy.ca.gov
Public Advisor Mona Badie, publicadvisor@energy.ca.gov
Grants Ombudsman, grantsombudsman@energy.ca.gov

Background and Reasons for Request

Background

Funding Round Five of the Ventilation Program was announced by the CEC on July 5, 2023, with an application deadline of May 31, 2024.

On May 17, 2024, the CEC issued a Notice of Deadline Extensions for the Ventilation Program, extending both the application and grant agreement processing deadlines:

- Funding Round Five application deadline for Assessment and Maintenance (A&M) and Upgrade and Repair (U&R) grants is extended to July 31, 2024.
- Processing deadline for A&M and U&R grant agreements is extended to October 31, 2024.

On June 28, 2024, the CEC issued a Notice of Updated Deadline, moving up the

Funding Round Five application deadline for Assessment and Maintenance and Upgrade and Repair grants provided in the Notice of Deadline Extension for the CalSHAPE Ventilation Program ... from July 31, 2024, to July 1, 2024[.]

This notice, emailed out after 4 pm on a Friday afternoon, gave interested parties essentially one business day's notice of the new application deadline.

Reasons for Request

1. The June 28 Notice of Updated Deadline Did Not Conform to CEC's Own Program Guidelines.

The June 28 Notice of Updated Deadline, citing the *Program Guidelines*, stated that "the CEC may issue a notice updating information to adjust the dates provided in the notice of funding availability."

The reason given in the notice for the abrupt deadline change was unspecified "budgetary constraints."

However, it is our understanding based on communications with CEC staff and other stakeholders that substantial funds remain in the Ventilation Program.

Chapter 1, Section G of the *Program Guidelines* provides that "Grant applications will be processed until all available funds within each funding category and tier are awarded." Further, in the event of lack of funds in a funding category and tier, the CEC "will

continue to accept applications and identify LEAs that may be funded.” In particular, Chapter 1, Section F states:

At any time, should the CEC determine that all funds in a single funding category and tier have been encumbered, the CEC may provide public notification of that determination but will continue to accept applications and identify LEAs that may be funded should additional funding become available.

The June 28 Notice of Updated Deadline, by completely suspending applications, represented a “substantive change[] to the adopted program guidelines,” which per Chapter 8, Section G of the *Program Guidelines*, “may be made with the approval of the CEC at a publicly noticed meeting with no fewer than 15 days public notice.” No such procedure was followed here.

Although Public Utilities Code Section 1614(b) contains an exemption from the Administrative Procedure Act, the CEC has adopted the *Program Guidelines* and should be bound by the procedure in its own rules, which comports with basic fairness.

2. The June 28 Notice of Updated Deadline Did Not Address the October 31, 2024 Grant Agreement Processing Deadline, Leaving It in Effect.

In contrast to the May 17 Notice of Deadline Extensions, which addressed both the application and grant agreement processing deadlines, the June 28 Notice of Updated Deadline speaks only of the application deadline:

The Funding Round Five **application deadline** for Assessment and Maintenance and Upgrade and Repair grants provided in the Notice of Deadline Extension for the CalSHAPE Ventilation Program [hyperlink omitted] is being **moved up from July 31, 2024, to July 1, 2024**[.] (First emphasis added; second emphasis in the original.)

The June 28 Notice of Updated Deadline makes no mention of the October 31, 2024 grant agreement processing deadline, thereby leaving that deadline in effect.

Notwithstanding this omission, it is our understanding based on communications with CEC staff and other stakeholders that the CEC is not processing either A&M and U&R applications submitted by July 1, or grant agreement documents associated with notices of proposed award (NOPAs) issued by that date.

In effect, the CEC appears to be treating July 1, 2024 as the grant agreement processing deadline, even though no change to the October 31, 2024 grant agreement processing deadline was made or noticed in the June 28 Notice of Updated Deadline or otherwise.

3. The June 28 Notice of Updated Deadline and Related CEC Actions Hinder CalSHAPE's Goals by Unfairly Limiting Access to Existing Funds Gathered for a Qualified Workforce to Make Desperately Needed School HVAC Improvements.

It is our understanding based on communications with CEC staff and other stakeholders that dozens of LEAs, comprising hundreds of schools and hundreds of thousands of students and teachers throughout the State, are affected by the CEC's abrupt application deadline change and related actions, including:

- Those that planned to apply by July 31, 2024, but were unable to meet the new July 1, 2024 grant application deadline with only one business day's notice.
- Those that applied on or before July 1, 2024, but do not have a NOPA, because the CEC is not reviewing applications or issuing NOPAs.
- Those that applied on or before July 1, 2024, and have a NOPA, but do not have an executed grant agreement, because the CEC is not processing grant agreements.¹

Also affected are the businesses and qualified workers these LEAs planned to partner with, as well as the broader communities in which they reside.

All had a reasonable expectation of fairness, certainty, and transparency from the CEC and that existing Ventilation Program funds would be used for the intended purpose of improving school HVAC to save energy, foster a qualified HVAC workforce, and safeguard student and teacher health and learning.

Without these funds, and against a backdrop of significant financial stress and inequity, many schools will struggle to make the HVAC investments desperately needed to ensure adequate ventilation, filtration, and temperature/humidity control. As a result, students, teachers, staff, and broader communities will be at risk of:

- decreased learning, performance, and productivity;
- diminished health and quality of life due to acute and chronic illness and developmental harm;
- missed school and work days, with associated learning and salary loss; and
- unrealized attendance-based school revenues.

Given increased extreme heat and storm events, wildfire smoke and other pollution, and the compounding effects of both, these schools will also be in danger of more frequent closures and resulting learning loss.

¹ In the event that our understanding of the CEC's current processing procedures is inadvertently incorrect, and the CEC is expeditiously reviewing, issuing NOPAs, and processing grant agreements for all Ventilation Program grant applications submitted on or before July 1, 2024, we respectfully request a full clarification in writing.

While Californians are broadly vulnerable to these threats, those with existing health conditions or living in disadvantaged communities will be especially so.

For these reasons, we respectfully request that the CEC:

- Reconsider its June 28, 2024 Notice of Updated Deadline for the Ventilation Program and reopen the Funding Round Five open application period for an additional 30 days;
- Continue to expeditiously process grant agreements through October 31, 2024, in accordance with the grant processing deadline noticed on May 17, 2024; **and**
- At a minimum, make any decision shortening Ventilation Program deadlines and changing processing procedures for applications and grant agreements at a publicly noticed meeting with no fewer than 15 days' public notice, consistent with the *Program Guidelines*.