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Submission Via Docket

California Energy Commission
Docket Unit, MS-4
Docket No. 22-DECARB-03
715 P Street
Sacramento, California 95814

Re: **Comments of the Labor Coalition on the Draft Guidelines for the Equitable Building Decarbonization Direct Install Program**

Dear Commissioners and Staff:

We write on behalf of the Joint Committee on Energy and Environmental Policy, Western States Council of Sheet Metal, Air, Rail and Transportation Workers, California State Pipe Trades Council, and the International Brotherhood of Electrical Workers-National Electrical Contractors Association Labor Management Cooperation Committee (collectively “the Labor Coalition”) to comment on the Draft Guidelines for the Equitable Building Decarbonization Direct Install Program.¹ As discussed in detail below, the proposed guidelines fail to include enforceable and meaningful standards to ensure that this work is performed by high road contractors and will support the equitable creation of good jobs for disadvantaged workers and communities.

I. INTRODUCTION

Assembly Bill 209 directs the Commission to develop and implement an Equitable Building Decarbonization Program that will install retrofit measures in single-family and multi-family homes.² The program includes two sub-programs: the Direct Install Program and the Statewide Incentive Program.³ In December

¹ California Energy Commission, Equitable Building Decarbonization Direct Install Program: Draft Guidelines (Apr. 2023) (hereinafter “Draft Guidelines”), *available at* <https://efiling.energy.ca.gov/GetDocument.aspx?tn=249992&DocumentContentId=84725>.

² Pub. Res. Code § 25665 *et seq.*

³ *Id.* § 25665.1.

2022, the Commission released a request for information seeking input from the public to inform the development of the programs.⁴ In January 2022, the Labor Coalition submitted comments recommending that the Commission incorporate specific workforce standards into the direct install and incentive programs.⁵

In April 2023, the Commission released the Draft Guidelines for the Direct Install Program which proposed, among other things, workforce standards and requirements. The Labor Coalition greatly appreciates the Commission's efforts to develop a comprehensive installation program that reduces greenhouse gas emissions from existing buildings while advancing energy equity. However, as proposed, the Draft Guidelines provide advisory but not compulsory guidance with respect to workforce standards. The guidelines require prevailing wage, but only where such wages are already required by law.⁶ The guidelines also state an expectation for administrators to implement a workforce plan with the goal of ensuring high-quality installation and creating local, good-paying jobs in the communities served, but fails to include any enforceable requirements or metrics.⁷ Instead, the guidelines state that workforce plans "may" include provisions related to (1) contractor preference, (2) workforce training, and (3) bundling requirements.⁸

For twenty years, stakeholders have been advocating for the inclusion of meaningful workforce standards in state energy efficiency programs and every time these programs merely adopt platitudes and "encouragement" of such standards – but nothing meaningful is ever actually implemented. Without clear mandatory standards, this program will be more of the same: one that subsidizes low road contractors that use undertrained and underpaid workers – resulting in the creation of dead-end jobs and poor installation of subsidized energy efficiency measures that fail to provide the efficiency assumed by project administrators.

In our January comments, the Labor Coalition laid out in detail workforce standards that should be adopted to ensure that this program attracts high road contractors, achieves maximum energy savings for customers, ensures safe installation, creates good paying career-path jobs with benefits and training, and

⁴ California Energy Commission, Request for Information Equitable Building Decarbonization Program (Dec. 9, 2022), *available at* <https://efiling.energy.ca.gov/GetDocument.aspx?tn=248009&DocumentContentId=82299>.

⁵ Joint Committee on Energy and Environmental Policy et al., Comments of JCEEP, Western States SMART, California State Pipe Trades Council and the IBEW-NECA LMCC on Equitable Building Decarbonization Program, Docket 22-DCARB-03 (Jan. 20, 2023), *available at* <https://efiling.energy.ca.gov/GetDocument.aspx?tn=248475&DocumentContentId=82922>.

⁶ Draft Guidelines at p. 22.

⁷ *Ibid.*

⁸ *Id.* at pp. 22-23.

creates a clear, established path for disadvantages workers to enter into good-paying, construction careers. The key requirements that need to be included for workable and meaningful workforce standards that will encourage the participation of high road contractors are the following:

- (1) Direct install projects must be bid out in bundles large enough to attract the participation of high road contractors;
- (2) All construction work must be paid prevailing wage;
- (3) Contractors must be required to utilize apprentices from applicable state approved apprenticeship programs that have affirmative action plans in at least a 1:5 ratio;
- (4) First preference in awarding bids must be given to contractors that commit to using a skilled and trained workforce as that term is defined in the Public Contract Code; and
- (5) If contractors that are awarded work under the direct install program are required to be pre-qualified – the Guidelines should require at least half of the pre-qualified contractors to be contractors that are signatory (or have labor agreements) with plumbing, mechanical and/or electrical unions.

The Draft Guidelines also set a cost cap of \$5,000 for low income households and \$3,000 for moderate income households for the average per-home cost of remediation and safety measures, including wiring and electrical capacity upgrades.⁹ The Commission may be adjust these caps at a later date after administrators collect detailed information on actual remediation measures and costs.¹⁰ The Labor Coalition questions the necessity of this proposed requirement, and highlight that average for each grouping is way too low to cover the measures set forth in the program. The guidelines provide no justification for these costs, vaguely citing to Commission staff as the source.¹¹ The Commission should not impose a cost cap before it has collected data on actual remediation measures and costs.

⁹ Draft Guidelines at p. 16.

¹⁰ *Ibid.*

¹¹ *Ibid.*

II. PROPOSED WORKFORCE STANDARDS

A. The Commission Should *Require* Bundling in Order to Attract High Road Contractors

The key first step needed to enable this program to incorporate meaningful workforce goals is to *require* that administrators bid out direct install projects in bundles large enough to attract the participation of high road contractors. The Draft Guidelines recognize bundling as a means of saving costs and encouraging contractor participation but stop short of requiring it.¹²

Bundling projects into a single contract is a useful tool for creating a scale large enough to facilitate skilled and trained workforce standards.¹³ Having to bid separately on each individual residential or multifamily project is time consuming, costly, and unlikely to induce high road contractors to participate. In addition, low road contractors are much less likely to change their business model over a single project.

The Draft Guidelines estimate that funding for the direct install program will total \$643,700,000. If projects are bundled in approximately \$500,000 units – that would be 1,287 contracts that would be awarded – allowing participation of numerous contractors while still being large enough to attract high road contractors to perform this work. Bundling contracts would create big enough projects to entice high road contractors to participate in this program and would also create economies of scale reducing project costs.

B. The Commission Should Require All Construction Work to Be Paid Prevailing Wage

The Draft Guidelines require prevailing wage, but only where such wages are already required under law under the California Labor Code.¹⁴ This is not adoption of a workforce requirement. It is simply a statement that the contractors must comply with existing law.

¹² *Id.* at p. 23.

¹³ California Workforce Development Board, Putting California on the High Road: A Jobs and Climate Action Plan for 2030 (June 2020) pp. 225, 251 (recommending bundling individual solar projects to promote distributed generation at a scale large enough to incorporate skilled and trained workforce standards) (hereinafter “High Road Report”), available at <https://cwdb.ca.gov/wp-content/uploads/sites/43/2020/09/AB-398-Report-Putting-California-on-the-High-Road-ADA-Final.pdf>.

¹⁴ Draft Guidelines at p. 22.

Moreover, the guidelines expressly state that contractors do not have to pay prevailing wage if the Department of Industrial Relations determines that the project is not a public work subject to prevailing wage. Prevailing wage law contains several exceptions, none of which are likely to apply here. Nonetheless, the guidelines should mandate prevailing wage even if any other exceptions apply.

Payment of prevailing wage ensures that ratepayer-funded programs do not undermine local wages and do not provide an incentive for employers to recruit lower-wage workers from outside the area.¹⁵ It also creates a level playing field in the bidding process, ensuring that contractors compete on quality rather than on who can pay their workers the least amount of money. Studies have shown a direct link between contractors that pay low wages and no benefits, and the use of an unskilled workforce. Low pay, no benefits jobs have high turnover rates and discourage investment in the training of workers.¹⁶ Moreover, contractors that are unwilling to pay their workers decent wages or supply even basic benefits are unlikely to invest time and money in training.

C. In Order to Ensure Job Equity and Career Development Opportunities, the Commission Should Require All Contractors to Utilize Apprentices from State Approved Apprentices Programs

State-certified apprenticeship programs are the most effective way to provide career paths to disadvantaged workers. Apprenticeship training is the gold standard for ensuring a trained and qualified workforce and for providing good paying career pathways to disadvantaged workers. Apprenticeships are two to five years in length and include both classroom and hands-on training, along with oversight on the job by experienced journeypersons. Apprenticeship training curricula include specific training on safety and, depending on the craft, on energy and water efficiency measures. Apprenticeship programs are independently reviewed and approved by the California Division of Apprenticeship Standards.

Apprenticeship programs are also a proven pathway for providing disadvantaged workers good-paying construction-career opportunities. Each apprentice is a full-time worker who is receiving on-the-job training as an employee of a contractor on a jobsite. Because apprentices are paid, apprenticeship programs provide career growth opportunities to persons with families that cannot afford to take time off to attend college.

¹⁵ High Road Report at p. 70.

¹⁶ Kim & Philips, *Health Insurance and Worker Retention in the Construction Industry*, 1 J. Labor Research 31 (Mar. 2010) 20-38.

Moreover, state-approved apprenticeship programs are required by law to adopt an equal opportunity program with an affirmative action plan to recruit women and minority applicants.¹⁷ Among the many ways that Union apprenticeship programs meet this requirement is by partnering with Multi-Craft Core Curriculum (MC3) pre-apprenticeship programs throughout the state. The MC3 is a standardized, comprehensive, 120-hour construction curriculum approved by the National Building Trades and designed to help young people and transitioning adults choose and succeed in an apprenticeship program that is appropriate for them. In 2012, the US Department of Labor recognized the MC3 with its Registered Apprenticeship Innovator and Trailblazer Award.

These programs have been highly effective. The latest Department of Apprenticeship Standards numbers show that over 63% of statewide plumbing, electrical and sheet metal apprentices are Black, Indigenous, and People of Color (“BIPOC”).¹⁸ In the County of Los Angeles, over 80% of apprentices for those three crafts are BIPOC.¹⁹

Apprenticeship programs have also been found to help reduce the wage and benefit inequities that women, workers of color and immigrants often face in the construction industry, by providing standardized training, wages and workplace rules that level the playing field for all employees.²⁰

The number of apprenticeship slots available each year, however, is limited by the number of contractors who are willing to utilize apprentices and the total hours available for apprentices to work. The adoption of requirements to use apprentices and apprenticeship graduates is thus necessary to increase local job opportunities for disadvantaged workers by increasing the demand for apprentices.

A requirement to utilize apprenticeship programs is also consistent with Public Works law. Public Works projects that exceed \$30,000 are already required

¹⁷ 8 Cal. Code Regs. § 215 (requiring apprenticeship programs to include an equal opportunity program with an affirmative action plan to recruit women and minority applicants); see Labor Code § 1777.5(f) (“The apprenticeship program supplying apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.”).

¹⁸ See California Apprenticeship, Registration Dashboard, https://public.tableau.com/app/profile/california.apprenticeship/viz/RegistrationDashboard_16301055851260/RegistrationDashboard (last updated June 21, 2023).

¹⁹ *Ibid.*

²⁰ Jacobs & Thomason, UC Berkeley Center for Labor Research and Education, The Union Effect in California #1: Wages, Benefits, and Use of Public Safety Net Programs (May 2018) p. 2, available at <https://laborcenter.berkeley.edu/pdf/2018/Union-Effect-in-California-1.pdf>.

to request dispatch of apprentices from applicable apprenticeship programs.²¹ The duty applies to all contractors and subcontractors on a project, even if their part of the project is less than \$30,000. The Draft Guidelines should strengthen this requirement for application to this program. All contractors on projects exceeding \$30,000 *in aggregate* should be required to utilize apprentices from applicable apprenticeship programs in at least a 1:5 ratio.

D. First Preference for Award of Contracts Should Be Given to Bidders that Commit to using a Skilled and Trained Workforce as Defined in the Public Contract Code.

The most effective way to ensure quality installation and increase demand for apprentices and apprenticeship graduates is to apply the skilled and trained workforce requirements set forth in Public Contract Code § 2600 et seq. Section 2600 sets forth a standard that may be adopted by local and state agencies that generally requires 60% of workers on site to be apprenticeship graduates. Because there are both union and non-union state-approved apprenticeship programs, this is not a union-only requirement.

A requirement to employ a skilled and trained workforce would result in significant benefits in energy savings alone. A study by the University of California, Berkeley found that the lack of standardized workforce training requirements results in significantly greater energy demand since poor quality construction results in substandard energy efficiency performance.²² Utility energy efficiency incentive program analyses have consistently found that actual savings are substantially below projected savings.²³ These shortfalls in savings represent significant lost opportunities.

This gap is most prevalent in replacement HVAC systems, where the efficiency of equipment is highly dependent on the quality of its installation.²⁴ Utility-funded studies have found that the majority of residential HVAC installers have no training in any of the industry standards for HVAC installation, resulting in “high failure rates on routine tasks.”²⁵ A Commission study reported that up to

²¹ Labor Code § 1777.5.

²² Zabin et al., Workforce Issues and Energy Efficiency Programs: A Plan for California’s Utilities (2014) pp. 32-34, appen. 2b (hereinafter “Energy Efficiency Workforce Guidance Plan”), *available at* <https://laborcenter.berkeley.edu/pdf/2014/WET-Plan14.pdf>.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ See Southern California Edison, Energy Efficiency Rolling Portfolio Business Plan for 2018-2025 (Jan. 17, 2017) p. 63 (stating that there are a limited number of contractors who are even able to implement industry standards for HVAC quality installation), *available at*

85% of replacement HVAC systems were installed or designed incorrectly, resulting in substantial unrealized energy savings.²⁶ The Study also found that poor quality installation of cooling systems results in a 20 to 30 percent increase in energy use.²⁷

The use of an inadequately trained workforce to install energy efficiency incentive measures is also a safety issue. Poorly installed electrical components, lighting systems or HVAC systems can result in fire hazards or hazards related to poor indoor air quality, gas leaks or carbon monoxide poisoning. Poorly installed plumbing, insulation, solar panels, roofs, or windows can result in leaks, mold and sanitation issues.

This concern is particularly heightened for the proposed electrification program since it includes replacing gas-fired heating appliances with electric heat pumps. This will greatly increase the electrical load requirements for a building. Existing buildings may require upgraded panels, breakers and wiring to safely handle this increased electrical load. Poor installation under this program would not only strand energy savings, but also increase the likelihood that these ratepayer-funded measures will put customers at risk.

To address these issues, the draft guidelines should be revised to require that program administrators give first preference in awarding contracts to Contractors that commit to using a skilled and trained workforce to perform the work. Prevailing wage is the same whether a contractor uses a skilled and trained workforce, so such a requirement provides significantly improved efficiency, safety and workforce development outcomes without any increase in labor wages. While Commission staff has questioned whether enough high road contractors that employ a skilled and trained workforce would participate in a residential program such as this, we don't share that concern – particularly if projects are bundled to better attract such contractors. Nonetheless, this concern can be addressed by simply providing administrators the authority to award bids to contractors who do not

https://www.caeecc.org/files/ugd/0c9650_a0b40f88a30c4f0ab7b02d35f2360591.pdf; see also San Diego Gas & Electric Company, Building a Better Energy Efficient Future: SDG&E's Energy Efficiency Business Plan 2018-2025 (Jan. 17, 2017) p. 216 (“trade professionals don't have the technical knowledge, skills, or abilities to meet SDG&E's savings goals”), available at https://www.caeecc.org/files/ugd/0c9650_52c02da4469c4213b0974b412b3f85ad.pdf; Pacific Gas & Electric Company, Energy Efficiency Business Plan 2018-2025 (Jan. 2017) residential appen. at p. 30 (finding “high failure rates for job performance on routine tasks” and finding that “less than half of HVAC technicians operating in California are aware of the Air Conditioning Contractors of America (ACCA) standards for work quality”), available at https://www.caeecc.org/files/ugd/0c9650_cbeb1d9e14cf4575845e8d5cd6bce57f.pdf.

²⁶ Energy Efficiency Workforce Guidance Plan at pp. 32-34, appen. 2B.

²⁷ California Energy Commission, Strategic Plan to Reduce the Energy Impact of Air Conditioners, CEC-400-2008-010 (June 2008) p. 5.

commit to using a skilled and trained workforce if high road contractors are not available to do this work. Under such a system, high road contractors would simply be given first priority when awarding bids.

E. If Contractors Are Prequalified, the Commission Should Require that at Least Half of Pre-Qualified Contractors Are Union Signatory Contractors

It is unclear from the guidelines how work will be awarded under this program. If contractors that are awarded work under the direct install program are required to be pre-qualified – the Commission should modify the Draft Guidelines to require at least half of the pre-qualified contractors to be contractors that are signatory (or have labor agreements) with plumbing, mechanical and/or electrical unions. This will ensure that the pool of contractors bidding on these projects includes contractors that already participate in apprenticeship programs, pay prevailing wage, and rely on highly trained apprenticeship graduates.

III. Individual Workforce Plans by Each Administrator Creates Complexity and Inconsistency, and Is Unlikely to Result in Meaningful Standards

As proposed, the Draft Guidelines do not actually require any workforce standards because development and implementation of workforce plans is couched in discretionary language, with no required outcomes, metrics or measures. As such, the Draft Guidelines do not provide any assurances that customers will receive high quality installations. If the Commission establishes clear workforce standards, then a workforce plan is unnecessary and the implementation process for this program will be quicker and less complex.

If the Commission continues to require a workforce plan, it should also mandate that administrators publish the plan on the docket, provide members of the public with an opportunity to submit written comments, and require written approval from Commission staff. These steps would ensure that the plans are consistent with the program guidelines and achieve the workforce standards established by the Commission.

IV. THE PROPOSED AVERAGE PER HOME/UNIT CAP IS TOO LOW

The Labor Coalition questions the proposed requirement that the average cost for each project be \$5,000 for low income and \$3,000 for moderate income households. This average is way too low to cover the measures set forth in the

program and no justification for these costs are provided in the Guidelines. A simple Google search shows that the average cost just to install a heat pump heating unit in Southern California is \$8000 to \$20,000.²⁸ If new electrical wiring and/or electrical panels are needed to allow the installation of an electric heat pump, water heat pump, electric stove or electric dryer, these costs will likely be much higher.

The cap is also well below those established by the California Public Utilities Commission (“CPUC”) for the Self Generation Incentive Program (“SGIP”) Heat Pump Water Heater (“HPWH”). For residential HPWH systems serving one household, the CPUC set a HPWH incentive cap of \$7,300 for general market residential customers, and \$10,385 for equity residential customers.²⁹ This cap included an electrical panel upgrade incentive of \$2,000 and \$4,000 respectively.³⁰ Unlike the direct install program, the SGIP HPWH incentives are not intended to cover the entire costs of replacement.

An artificially low average cost is also counterproductive to the goals of this program because such a requirement will incentivize administrators and contractors to replace units in homes that already are wired to use electric appliances. Those are the homes that are most likely to replace units with electric appliances on their own when their appliances need replacing. To truly achieve real reductions in greenhouse gas emissions, this program should focus on homes that require new wiring or new electrical panels to utilize electric appliances since those are the homes least likely to ever upgrade on their own.

The low average cost could also create safety issues as administrators would have an incentive to avoid costly wiring or panel upgrades to meet this requirement. At a minimum, the underlying assumptions made for the average cost per home/unit for the program should be made public so that industry stakeholders can peer review it.

²⁸ See, e.g., Burgeson’s Heating, A/C, Electrical, Solar, Plumbing, How Much Does It Cost To Install a Heat Pump in Southern California, <https://www.burgesons.com/blog/how-much-does-it-cost-to-install-a-heat-pump-in-southern-california> (Nov. 19, 2020); Kevin Purdy, *How Much Does a Heat Pump Cost?*, <https://carbonswitch.com/heat-pump-costs/> (last visited June 30, 2023); Timothy Moore, *How Much Does Heat Pump Installation Cost?*, <https://www.forbes.com/home-improvement/hvac/heat-pump-installation-cost/> (Mar. 10, 2023); Home Guide, *How Much Does a Heat Pump Cost?*, <https://homeguide.com/costs/heat-pump-cost> (last visited June 30, 2023); Angi, *How Much Does a Heat Pump Cost? [2023 Data]*, <https://www.angi.com/articles/how-much-does-heat-pump-cost.htm> (last visited June 30, 2023).

²⁹ D.22-04-036, Decision Establishing Heat Pump Water Heater Program Requirements (Apr. 11, 2022) appen. A at p. A5, available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M467/K581/467581288.PDF>.

³⁰ *Ibid.*

V. CONCLUSION

By bundling projects, requiring the use of apprentices, and providing first bidding preference to contractors that utilize a skilled and trained workforce, the Direct Install Program would create equity and economic opportunities for disadvantaged workers and ensure that the work performed for these programs will maximize energy efficiency and greenhouse gas reduction gains, and will be safe, reliable and cost-effective. Utility-funded studies have found that incorporating minimum contractor training and workforce standards into energy efficiency programs promote work quality, generate greater energy savings, improve customer satisfaction (which leads to increased customer participation), reduce call-backs and equipment failures from ineffective installation or maintenance, improve safety (particularly important for programs that add higher electrical loads to existing building electrical systems), accelerate market adoptions and improve compliance with codes and standards.³¹

The Commission should revise the Draft Guidelines to ensure the use of adequately trained and qualified workers while at the same time supporting a pipeline for disadvantaged workers that leads to job placement and retention in the energy efficiency sector.

Thank you for your consideration of these comments.

Sincerely,



Thomas A. Enslow
Andrew J. Graf

AJG:acp

³¹ Energy Efficiency Workforce Guidance Plan at p. 51.