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August 5, 2009

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Via Email to: [docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

Via U.S. Mail to:  
California Energy Commission  
Dockets Office, MS-4  
Re: Docket No. 09-OII-01  
1516 Ninth Street  
Sacramento, CA 95814-5512

**DOCKET**

**09-OII-1**

DATE 8/5/2009

RECD. 8/5/2009

Re: Preliminary State Energy Program Guidelines, Docket No. 09-OII-01

We would like to begin by thanking the California Energy Commission and its staff for the tremendous effort it has put into preparing these proposed Guidelines. The CEC's leadership and financial assistance are key to the expansion and success of municipal energy financing programs throughout California.

Since Sonoma County has gone through the process of establishing an energy independence program, we believe we have a unique perspective in evaluating these guidelines, and we hope you find our comments useful. All of our comments pertain to Chapter II, Municipal Financing District Program (AB 811-type Programs).

General comments:

First, as you are aware, AB 811 expanded the authority to create contractual assessment programs, established in Chapter 29, Part 3, Division 7 of the California Streets and Highways Code, to include financing for privately owned energy efficiency and renewable energy improvements. Section 5898.12 authorizes cities and counties to designate "an area" within which contractual assessments may be established, and instructs that contractual assessment "programs" may be established "where the costs and time delays involved in creating an assessment district pursuant to other provisions of this division or any other law would be prohibitively large relative to the cost of the public improvements to be financed." It is our interpretation, and that of our bond counsel Richards Watson Gershon, that to establish a Chapter 29 contractual assessment program, a jurisdiction does not need to create a formal district. Mello Roos programs may, of

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course, operate differently. We would therefore suggest, as a global change, that the title to this section of the Guidelines be changed to “Municipal Energy Financing Programs” to eliminate confusion and the implication that a district must be formally established to have an effective, qualifying program. We also suggest that references to “financing districts” throughout Chapter II be changed to “financing programs.”

Second, while the financing mechanism, to the property owner, bears resemblance to a loan, from the perspective of lenders, it does not operate as a loan. Under the governing statutes, it is either a contractual assessment or a tax. Significantly, neither of these mechanism result in acceleration in the event of a foreclosure, by either the taxing authority or a lender. This has been a very important point in discussions with lenders on the operation of the Program, and its effect on their outstanding loans. We would therefore suggest that the extension of funding to a property owner by a jurisdiction be referred to as “financing” or some other generic term, but not as a “loan.”

Third, it is important to remember that a purpose of AB 811 is to remove the obstacle of upfront costs associated with energy improvements. Some of the proposals for managing programs have included caps and restrictions on the amount of funding and size of project. The CEC should carefully evaluate these suggestions, as many valuable efficiency projects will not be implemented if only partial funding is offered, because of program limitations imposed by jurisdictions in order to qualify for state program funding.

#### Specific comments:

Page 20, Part B, subsection 1(c): Are you asking for historical bond rating? Jurisdictions will not yet have a bond rating for Program bonds. Also, we would recommend inserting “anticipated” before “total dollar” in (c) (iii), as a jurisdiction may not have a firm figure until a program is up and running.

Page 20, Part B, subsection 1(f): Interest rate should be specified as fixed or variable. Also, consider adding a subparagraph regarding fees to be charged the property owner.

Page 20, Part B, section 2: Consider adding “establishing a system to track and report energy savings” and “provide free energy evaluations” to the list of fundable projects.

In addition, it would be most helpful to jurisdictions if the CEC could identify those uses of funds which would trigger prevailing wage requirements for individual projects, and which would not.

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Page 22, Part B, section 7, second paragraph: As discussed during an advisory group phone call, the CEC should require prudent evaluation of creditworthiness, but should avoid proscribing a standard. Both Palm Desert and Sonoma County have chosen to focus on the value of the property in evaluating creditworthiness of a project, with some effort (through a title search) to identify lenders that might be affected, and to ensure that the applicant is current on existing obligations with those lenders and is current on property tax payments. Because the AB 811 assessment is secured by the property and has a superior lien, property value was determined to be the most appropriate criteria for approval. Securing additional information such as credit checks and employment history would require local jurisdictions to establish more complex systems of information management that would not be cost effective, reduce risk or add value to many programs.

Page 23, Part B, section 8: Consider deleting this section in its entirety. Alternatively, consider only including a short section acknowledging that because these programs are new to the market, jurisdictions should include information on how they intend to resolve any uncertainty that might affect their ability to market bonds, i.e., whether they will pursue a validating action, or whether their bond counsel is willing to issue an unqualified opinion on the validity of any bonds issued. If the CEC wishes to retain this section in the guidelines, we suggest the paragraph describing the validation process be reworked with the assistance of a bond counsel to more accurately describe the procedure and the relationship between the validation action and bond counsel's willingness to issue an unqualified opinion.

Page 25, Part B, section 12: There was a suggestion during an advisory committee discussion that some mechanisms already exist to track energy savings as proposed by this section, and that perhaps the CEC could assist local jurisdictions and fund development of any programming needed to track and report energy savings. As mentioned above, we suggest adding "establishing a system to track and report energy savings" and "provide free energy evaluations" to the list of fundable projects in Part B, section 2.

Page 25-26, Part B, section 13: Define legal opinions, referenced in (c), to be publicly available legal opinions issued to a jurisdiction. As written, jurisdictions may be concerned that the CEC is requiring confidential attorney client material. In (i), the CEC is asking for job creation information: most jurisdictions would have, at best, an estimate of this information, using tools such as the estimate in Part C, section 1, on page 26. We suggest removing the reference to number of jobs created/maintained in section 13.

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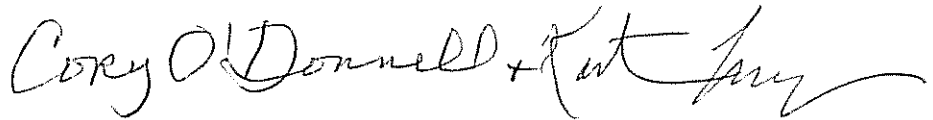
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Page 27, Part C: Revise paragraph (g) to focus on the property value, not the creditworthiness of the applicant. Eliminate paragraph (h), or limit as indicated in the discussion above to focus only on how jurisdictions intend to address legal issues and ensure market acceptance for their bonds.

Page 28, Part C, section 5: How will local governments know the amount of energy savings per SEP dollar invested, before the program is established? Perhaps CEC can provide criteria for local governments to perform this evaluation.

Thank you again for your efforts and the opportunity to participate in the development of the Guidelines for this important program.

Very truly yours,

A handwritten signature in black ink, appearing to read "Cory O'Donnell + Kathleen A. Larocque". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Kathleen A. Larocque and  
Cory O'Donnell  
Deputy County Counsels

KAL:jk

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