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October 1, 2009

California Energy Commission
Dockets Office, MS-4
Re: Docket No. 09-OII-1
1516 Ninth Street
Sacramento, CA 95814-5512

Subject: *San Joaquin Valley Air Pollution Control District &
San Joaquin Valley Clean Energy Organization's COMMENTS
Order Instituting Information Proceeding – American Recovery
and Reinvestment Act
Docket No. 09-OII-1*

The San Joaquin Valley Air Pollution Control District (Air District) and the San Joaquin Valley Clean Energy Organization (SJVCEO) appreciate the opportunity to provide written comments to assist the California Energy Commission (CEC) in implementing and administering projects funded by the Energy Efficiency and Conservation Block Grant (EECBG) Program under the American Recovery and Reinvestment Act (ARRA) of 2009.

The Air District and the SJVCEO have developed a regional partnership to assist small local jurisdictions within the San Joaquin Valley (Valley) in applying for and administering EECBG allocations. In many cases, small jurisdictions in the Valley were not even considering applying for these non-competitive grants given the lack of fiscal and staff resources required to: (1) evaluate program options prior to application; (2) complete and submit the application; and (3) administer the extensive reporting responsibilities consistent with ARRA requirements. The presence of our regional partnership enables these small jurisdictions to take advantage of these opportunities to the benefit of the entire Valley.

Both the Air District and the SJVCEO want to acknowledge the willingness of your staff, especially John Sugar, in taking the time to answer our questions, hear our concerns, and solicit our comments. We feel that this open dialogue throughout the development of the Block Grant Guidelines helped in developing a program that not only our partnership would be able to utilize, but would also be usable for small jurisdictions that may have the means of submitting an application on their own. Understanding the difficulties in trying to develop such a comprehensive program under such severe time constraints, we have tried desperately to work through possible "kinks" in the guidelines to ensure a successful program for the Valley and the State.

The Air District and the SJVCEO provided supporting testimony at the September 16, 2009 regular business meeting of the California Energy Commission, despite the fact that we continued to have concerns about specific text within the Committee Draft of the Block Grant Guidelines. We provided such testimony with the understanding that subsequent the adoption of the Committee Draft, amendments

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would be proposed that would address our concerns. Regretfully, the amendments did not address this concern and raised additional questions. Generally, our main concerns/objections center on the cost-effectiveness threshold and the ability to provide accurate analyses to support the cost-effectiveness of proposed projects.

Cost-Effectiveness (Section 3) – “most cost-effective”

The Air District and SJVCEO continues to object to the provision of the EECBG Guidelines in Section/Chapter 3, Cost-Effectiveness, that requires the applicant to “certify...the most cost-effective energy efficiency project” as part of the feasibility study required with each application.

Throughout the public workshop/meeting process, CEC staff clearly stated that this was not a competitive process; that simply meeting the established cost-effectiveness threshold, and other administrative requirements of the application process, would essentially ensure disbursement of EECBG funds from the CEC. This non-competitive issuance of EECBG funds to small jurisdictions is somewhat comparable to block grant funds that were distributed to large jurisdictions directly from the DOE. Albeit, there was NO cost-effectiveness threshold established for large jurisdictions, simply a list of potential uses for EECBG grants, some of which would not meet the cost-effectiveness threshold requirement for small jurisdictions.

We understand that state law established the additional cost-effectiveness requirement for EECBG funds disbursed through the CEC to small jurisdictions, specifically AB 2176, which added Chapter 5.5 to Division 15 of the Public Resources Code (PRC). In reviewing the PRC, Section 25450-25450.5, as amended by Budget Trailer Bill ABX-11 on July 28, 2009, the Legislative intent, as stated in Section 25450(3)(c), of the provision is “to *strive to maximize the opportunity* to allocate funds toward the most cost-effective energy efficiency projects...” [*emphasis added*]. The requirement for “most cost-effective” projects is not used beyond that portion of the text that establishes the Legislative intent. Instead, the requirement is that projects be *prioritized* based on cost-effective energy efficiency.

The CEC established a cost-effectiveness threshold, which in effect *sets the priority* for projects to be considered; those projects that meet the threshold are the ones that are considered for funding. Thus, the Legislative intent *has been met*; CEC staff developed a process to maximize the opportunity for cost-effective projects by requiring a minimum cost-effectiveness without excessive burden to, or competition among small jurisdictions. Although more onerous than requirements placed on large jurisdictions for the use of EECBG funds, a minimum cost-effectiveness threshold appears to be a viable option within the confines of the PRC and the administrative capabilities of the CEC and applicants.

Section 25450.5 of the PRC gives the CEC the ability to set guidelines to govern “the award, eligibility, and administration of funding” of ARRA funds, which the CEC has done pursuant to a public process with the required 30-day notice prior to Commission approval. If substantive changes were to be made to the guidelines, additional notice time would be required before approval by the Commission. Based on the argument presented here, the Air District feels that amending that portion of Section/Chapter 3, Cost-Effectiveness that establishes a requirement for applicants to “certify that [projects] are the most cost-effective energy efficiency opportunities” is *not a substantive change* and suggests the following replacement language:

“Each applicant must provide a feasibility study with costs and energy savings estimates of the project(s) proposed for EECBG funding awards, showing that all projects under the application, in total, meet at least the minimum cost-effectiveness threshold established by the Energy Commission.”

Leaving the existing language in the guidelines, which is more restrictive than the requirements established in PRC 25450.2, opens both the CEC and the applicant up to unnecessary appeal given the last sub-section of this Chapter, specifically 25450.5(b), which states:

“Grants and loans made pursuant to this chapter are subject to appeal to the commission upon a showing that factors other than those described in the guidelines adopted by the commission are applied in making the awards and payments.”

Furthermore, the aforementioned text in Section 3 appears to be in conflict with the Eligibility Criteria in Section 5(c), which identifies the “minimum criteria for funding eligibility, including: ...projects must be cost-effective...;” not the “most cost-effective.”

In conclusion:

- a) The Legislative intent of Chapter 5.5 of Division 15 of the Public Resources Code is met without inclusion of the “certify...the most cost-effective” language in Chapter/Section 3;
- b) Applications meeting the cost-effectiveness threshold established by the CEC, will indeed represent an attempt to maximize the cost-effectiveness of energy efficiency projects funded through the expenditure of EECBG funds;
- c) The substitute language is consistent with the overall intent and publically-stated purpose of the Block Grant Guidelines;
- d) The substitute language does not constitute a substantive change to the Block Grant Guidelines; and
- e) Not amending the existing language may open up the Commission and prospective applicants to unnecessary appeal liability pursuant to PRC 25450.5(b).

Eligibility (Section 5) – Direct Equipment Purchase Project Option

We understand that the direct purchase option is meant to assist applicants that “may not have the resources and/or expertise to identify and develop complex energy efficiency projects,” however, the option is still onerous for those without the fiscal resources to employ assistance for energy audits and cost estimates, which are still required for this option and would be non-reimbursable. To make this option truly less onerous to applicants, the CEC would provide general cost estimates for these preselected equipment options.

Since the equipment options provided in Attachment B to the Guidelines are considered to be cost-effective for the purposes of the Guidelines, presumably, the CEC has extensive experience in evaluating both the equipment costs and installation costs of such retrofits. Rather than require applicants to acquire “material/equipment and installation cost estimates,” the CEC should provide per unit general costs, including installation. As long as the final installation, accounting for administrative costs, is within a pre-determined percentage of the application estimates projects would be determined viable and reimbursable. Greater discrepancies could be further justified in written form if necessary.

Allowing these changes to the guidelines would not only lessen the burden on small jurisdictions, but would seem to lessen the extent of technical review for CEC staff. Also, based on our preliminary survey of local jurisdictions within the Valley, this would be a very popular option.

General Considerations – CEC Technical Assistance & Flexibility

We are certainly aware of the fact the CEC is trying to work within the confines of Chapter 5.5 of Division 15 of the Public Resource Code with respect to ensuring that EECBG funds are used for cost-effective energy efficiency measures. However, the process defined by the Revised Block Grant Guidelines have become overly-onerous considering that those applying for these funds are, for the most part, from the most under-served and economically stressed communities in the State; those jurisdictions that may have to rely on the police chief to also run the procurement department and that suffer from some of the highest unemployment rates in the country. Requiring more of these communities than the Department of Energy required of the large jurisdictions is too much to ask. Understanding that in the end, energy efficiency measures pursued by small jurisdictions will need to be cost-effectiveness, as defined by the Guidelines, the CEC needs to make every effort to provide as much assistance, especially with regards to minimizing the need for full assessments and the availability to general installation costs prior to the application, as well as assistance and flexibility in adjusting projects and costs after the application, once grants are awarded. Other than requiring jurisdictions or those pursuing regional applications to spend resources that are not available, we feel this is the only way to ensure state-wide success of this program.

The Air District and the SJVCEO hope that the California Energy Commission will find these comments and suggestions helpful in creating a strong and successful program that will maximize benefits to small jurisdictions in the San Joaquin Valley and the State of California.

Sincerely,



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Executive Director/Air Pollution Control Officer
San Joaquin Valley Air Pollution Control District



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