**Coalition for Energy Efficiency Proposal re Diverse and Disadvantaged Worker Access Terms for Third-Party Energy Efficiency Contracts**

In Decision 18-01-004, the California Public Utilities Commission (“CPUC”) ordered the investor owned utilities (“IOUs”) to propose a set of contract terms and conditions that will apply to all third party contracts entered as part of their energy efficiency portfolios. Among the categories of terms that the Commission has required the IOUs to cover are terms addressing participation by diverse and disadvantaged businesses and employees.[[1]](#footnote-1) Specifically, with respect to the diverse and disadvantaged businesses issue, the Commission directed the utilities to:

1. Propose a definition of diverse and disadvantage communities.[[2]](#footnote-2)
2. Propose a goal to “include in the metrics for tracking the business plan results generally, specifically for third party contractors.”[[3]](#footnote-3)
3. Propose standard contract terms and conditions addressing diverse and disadvantaged businesses and employees, including small businesses, if applicable.[[4]](#footnote-4)

This memorandum provides the Coalition for Energy Efficiency’s (“CEE”) proposed language to address each of these three topics. This proposal represents the consensus position of CEE’s member organizations. CEE’s members include: (1) BlueGreen Alliance; (2) Sierra Club California; (3) California Community Colleges Chancellor’s Office; (4) the Coalition for Clean Air; (5) Joint Committee on Energy and Environmental Policy; (6) Coalition of California Utility Employees; (7) IBEW-NECA California State Labor Management Cooperation Committee; (8) the California Labor Federation; (9) Western States Council of Sheet Metal, Air, Rail and Transportation Workers; (10) California State Pipe Trades Council; (11) Operating and Stationary Engineers, locals 39 and 501; (12) Avery Energy Enterprise; and (13) Cal SMACNA (California Association of Sheet Metal and Air Conditioning Contractors, National Association).

1. **Defining “Diverse and Disadvantaged Business”**
2. **Prior CEE Proposal**

In CEE’s opening comments on the proposed decision, CEE proposed the following definition of disadvantaged workers:

“[W]orkers from minority and low-income communities and those with barriers to employment (e.g., formerly incarcerated, homeless, veterans, and those with disabilities).”[[5]](#footnote-5)

This definition was developed by CEE members and was favored for its inclusion of both the more common definitions of disadvantaged workers (minority and low-income community members) as well as other groups that frequently face barriers to employment (formerly incarcerated, homeless, veterans).

1. **CalEPA definition of “disadvantaged communities”**

At the CPUC meeting approving the third party bid solicitation decision, Commissioner Rechtschaffen recommended that the IOUs consider the definition of disadvantaged communities used by CalEPA for distributing proceeds from the State’s Cap-and-Trade Program. For purposes of the Cap-and-Trade Program, CalEPA designates specific communities as “disadvantaged communities” using the California Communities Environmental Health Screen Tool (CalEnvirosScreen). Specifically, CalEPA designates the “highest scoring 25% of census tracts from CalEnviroScreen 3.0 as disadvantaged communities. Additionally, 22 census tracts that score in the highest 5% of CalEnviroScreen’s Pollution Burden, but do not have an overall CalEnviroScreen score because of unreliable socioeconomic or health data, are also designated as disadvantaged communities.”[[6]](#footnote-6)

More information regarding the specific methodology used to determine CalEnviroScreen scores is available on the OEHHA website at <https://oehha.ca.gov/calenviroscreen/sb535>.[[7]](#footnote-7)

Potential benefits of using the CalEPA definition of “disadvantaged communities” include:

* The definition covers workers from areas facing heavy pollution burdens, sensitive populations, and socioeconomic challenges.
* The definition is based on CalEnviroScreen data, thus the pool of eligible communities and workers will update to reflect to changes in environmental conditions and population characteristics.
* It is consistent with the definition employed by State government agencies (and was recommended by CPUC Commissioner Rechtschaffen).

On the other hand, potential shortcomings of the CalEPA definition include:

* The definition speaks to disadvantaged *communities*, rather than the workers themselves.
* The definition excludes diverse or disadvantage workers living in areas outside the highest scoring 25% of census tracts.
* The definition may be geographically restrictive. For example, what happens for programs and projects occurring far away from a designated community?
* The definition may fail to benefit certain categories of workers that face barriers to employment (e.g., formerly incarcerated, veterans, and those with disabilities).

In sum, use of the CalEPA definition of “disadvantage communities” does not, by itself, encompass the universe of disadvantaged workers intended to be covered under Decision 18-01-004.

1. **CEE Revised Proposal for Definition of Diverse and Disadvantaged Communities**

CEE recommends combining the CalEPA definition of “disadvantaged communities” with the CEE’s prior proposed definition of disadvantaged workers. CEE’s proposes the following definition of Diverse and Disadvantaged Communities:

Diverse and disadvantaged communities shall include: (a) workers from minority and low-income households; (b) workers with barriers to employment (e.g., formerly incarcertated, homeless, veterans, and those with disabilities); and (c) workers from disadvantaged communities as designated by the CalEPA CalEnviroScreen.

1. **Goal for Tracking Diversity and Inclusion**

On page 41, the Decision says, “For diverse and disadvantaged businesses and employees, [the CPUC] will require the utilities to propose a definition, as well as a goal, that we may include in the metrics for tracking of the business plan results generally, specifically for third party contractors.”

CEE proposes the following metrics and goals in order to track the overall progress of the IOU energy efficiency programs in providing job access to disadvantaged workers and disadvantaged communities:

**Metric**: The percentage of energy efficiency program funding that goes to energy efficiency measures installed by contractors that have demonstrated a commitment to provide career pathways to disadvantaged workers.

**Goal**: By 2021, 25 percent[[8]](#footnote-8) of all energy efficiency program funding goes to energy efficiency measures installed by contractors that have demonstrated a commitment to provide career pathways to disadvantaged workers.

1. **Contract Terms for Diverse and Disadvantaged Workers**

In D.18-01-004, the Commission directed the IOUs to propose contract terms and conditions that address “diverse and disadvantaged businesses and employee terms, including small business, if applicable.” CEE proposes the following contract terms to ensure that third party energy efficiency programs support providing disadvantaged workers access to the jobs created by these programs:

In the Implementation Plan, [third party] shall include a section describing the manner by which [third party] will support providing disadvantaged workers’ access to the jobs created by the program, such as through the adoption of workforce diversity and inclusion goals or entering into employment partnerships with state-certified apprenticeship programs, community colleges, or other organizations that have a proven track record of training and providing career opportunities to disadvantaged workers.

Where the program provides incentives, rebates, subsidies or other assistance directly to contractors or employers of contractors, or engages, pre-qualifies or recommends specific contractors for the installation of a program-supported energy efficiency measure, [third party] shall reserve at least 50% of the funding for this assistance to energy efficiency projects installed by contractors that demonstrate a commitment to provide career pathways to disadvantaged workers by:

* Entering into a hiring agreement, such as a community workforce agreement, community benefits agreement, labor agreement, or similar mechanism with an organization that has a proven track record of training and providing career opportunities to disadvantaged workers, including, but not limited to, community colleges, multi-craft core curriculum pre-apprentice programs, or apprenticeship programs that are approved by the California Division of Apprenticeship Standards and required to comply with the State of California Plan for Equal Opportunity in Apprenticeship; and
* Adopting an inclusion goal to make a good faith effort that at least 20 percent of all new hires shall be composed of disadvantaged workers. A good faith effort to meet inclusion goals shall not require a contractor to take any action that would violate a collective bargaining agreement.

During the duration of the contract, [third party] shall track which contractors have demonstrated a commitment to provide career pathway opportunities to disadvantaged workers and shall provide an annual report to [IOU] describing its compliance with [section above] and the progress the program has made to support participation by disadvantaged workers.

1. D.18-01-004, pp. 39-42. [↑](#footnote-ref-1)
2. Id. at 41, 63. [↑](#footnote-ref-2)
3. The Commission’s specific direction as to the requirement to propose metrics and goals for diverse and disadvantaged workers is somewhat unclear. In the order, the IOUs are directed to include the motion “*a metric* for tracking progress toward a goal.” Id. at p. 63 (italics added). However, in the discussion, the Commission directed the utilities “to propose a definition, *as well as* *a goal*, that we may include in the metrics for tracking of the business plan results generally, specifically for third party contractors.” Id. at p. 41 (italics added). [↑](#footnote-ref-3)
4. Id. In the Decision, the IOUs were specifically ordered to select one company from among them to file a motion for approval of a standard contract and to include standard terms and conditions that address (1) eligibility requirements, (2) safety requirements, (3) the dispute resolution process, and (4) the termination process. With regard to all other terms, including diverse and disadvantaged business and employee terms, the IOUs were ordered to include “placeholder terms.” Id. at p. 63. [↑](#footnote-ref-4)
5. Opening Comments of Coalition for Energy Efficiency on Proposed Decision on Third Party Bid Solicitation Process for Energy Efficiency Programs, p. 5 fn. 4 (Dec. 4, 2017). [↑](#footnote-ref-5)
6. Designation of Disadvantaged Communities Pursuant to Senate Bill 535 (De Leon) (Apr. 2017), *available at* <https://calepa.ca.gov/wp-content/uploads/sites/62/2017/04/SB-535-Designation-Final.pdf>. [↑](#footnote-ref-6)
7. See also id. [↑](#footnote-ref-7)
8. This goal reflects that a substantial portion of energy efficiency program funding may go to programs that are not amenable to tracking who ultimately installs the energy efficiency measures. [↑](#footnote-ref-8)