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Decision 98-04-063 April 23, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation.

Order Instituting Investigation on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation. Rulemaking 94-04-031 (Filed April 20, 1994)

ORIGINAL

Investigation 94-04-032 (Filed April 20, 1994)

(See Attachment 1 for List of Appearances.)

INTERIM OPINION: POLICY RULES AND REQUEST FOR PROPOSALS FOR ENERGY EFFICIENCY PROGRAM ADMINISTRATORS

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1. Introduction and Summary

By Decision (D.) 97-02-014, the Commission established the California Board for Energy Efficiency (CBEE) to make recommendations about energy efficiency programs in the restructured electric industry. The Commission determined that new administrators of energy efficiency programs would be selected through a competitive bidding process. Among other things, CBEE was assigned the task of developing requests for proposals (RFPs) articulating policy and programmatic guidelines for new administrators of these programs, subject to Commission approval.¹ Pursuant to Public Utilities Code § 381, funding for energy efficiency and other public goods programs will be accomplished through a nonbypassable rate component of the local distribution service, referred to as the Public Goods Charge (PGC).

Today's decision is contingent upon the continuance of the new administrative structure established by D.97-02-014 and subsequent decisions, which is currently being reviewed by the Commission in light of a recent ruling by the State Personnel Board's (SPB) Executive Director. On February 4, 1998, the Acting Executive Director of the SPB stated by letter ruling that the agreements between CBEE and its administrative and technical consultants were disapproved. This action was pursuant to a complaint to the SPB by the California State Employees Association. A related complaint by the Association of California Attorneys and Administrative Law Judges regarding agreements for legal consultant services is currently pending at the SPB.

¹ D.97-02-014 also established the Low-Income Governing Board (LIGB) as an advisory board concerning low-income assistance programs. LIGB has not yet submitted an RFP or policy rules for our consideration, so the focus of today's decision is on energy efficiency program administration.

We issue today's decision to facilitate expeditious implementation of the tasks facing us to further California's energy efficiency goals in a restructured industry. Our intention is to stay the course established by D.97-02-014. However, if this course is not found feasible by June 30, 1998, we will consider alternatives, including the option of continued utility administration. Accordingly, today's decision addresses CBBE's proposed policy rules and RFP on a conditional basis. Today's adopted policy rules will not be implemented until further Commission direction is given. Similarly, the approved RFP package will not be released until we so order.

Subject to the condition described above, we approve the policy rules and RFP proposed by CBEE for energy efficiency program administrators, with certain modifications. We eliminate renewable self-generation electricity projects from the definition of energy efficiency in the policy rules, RFP and model contract. Should CBEE wish the Commission to reconsider inclusion of renewable self-generation in this definition after more public input and workshops, it may resubmit this recommendation under the procedures outlined in the decision.

As discussed in this decision, we generally adopt CBEE's recommendations regarding affiliate rules and code of conduct by administrators.¹ However, we modify CBEE's proposed rules to allow the transfer of employees to affiliates of administrators, subject to the safeguards contained in our adopted utility affiliate rules. In addition, we direct the utilities and administrators (utility or nonutility) to provide information to CBEE and the Commission about the energy efficiency market and its participants as the

² We use the term "administrator" and "program administrator" interchangeably throughout this decision.

market develops, including the number and dollar value of contracts between administrators, affiliates and other entities providing energy efficiency services.

We also make certain changes to the proposed rules and RFP to remove references to CBEE where, in our view, those references 1) inappropriately delegate decision making authority to CBEE or 2) prematurely conclude that CBEE can receive reimbursement funds or enter into contracts. In particular, we clarify that CBEE's recommendations regarding the role of program administrators in nonexcluded implementation functions will be subject to Commission approval. Because of issues regarding the SPB and CBEE's legal structure, we are still in the process of considering certain elements of the contracting process, such as what entity or entities will hear protests, serve as contracting agent and serve as procurement official. Therefore, we defer consideration of CBEE's proposed model contract until these issues are clarified by further Commission order.

Within 20 days of the effective date of this order, CBEE should file a revised RFP package, including the policy rules to reflect the modifications and clarifications adopted by today's decision. This compliance filing should be filed at the Commission's Docket Office and served on the Special Public Purpose service list in this proceeding. The Commission will respond to this filing by a letter from our Executive Director, after consultation with the assigned Commissioner.

The term set forth in CBEE's proposed RFP and accompanying model contract requires the Commission to seek a waiver from the Department of General Services (DGS) to extend the term beyond 36 months. We direct our Executive Director to seek such a waiver as expeditiously as possible. Accordingly, we condition our approval of CBEE's proposed contract term upon DGS's approval of our request for a waiver.

2. Procedural Background

On November 24, 1997, CBEE filed its proposed RFP for selection of program administrators, policy rules for energy efficiency activities, affiliate rules and related appendices, pursuant to the assigned ALJ's implementation rulings.

The following parties filed written comments on December 10, 1997:
California Energy Commission (CEC), DGS, Energy Pacific, National
Association of Energy Service Companies (NAESCO), Natural Resources
Defense Council (NRDC), Pacific Gas and Electric Company (PG&E), Residential
Energy Efficiency Clearing House, Inc. (REECH), Residential Service Companies
United Effort (RESCUE)/Insulation Contractor Association of California
(ICA)/SESCO, Inc. (SESCO), Sacramento Municipal Utility District (SMUD),
San Diego Gas & Electric Company (SDG&E), Schiller Associates (Schiller) and
Southern California Edison Company (SCE). In addition, CBEE received oral
comments at a CBEE meeting on December 16, 1997.

CBEE reviewed all of the written and oral comments and developed responses to those comments at its meeting on December 16 and 17, 1997. CBEE filed a detailed response on December 19, 1997, explaining why it agreed or disagreed with the commenting parties, by issue. On January 31 and March 11, 1998, pursuant to the assigned ALJ's December 22, 1997 ruling, CBEE filed language revisions to its proposed RFP, contract and policy rules. These revisions were based on CBEE's agreement with some of the revisions and

³ See the ALJ Ruling of October 27, 1997 on implementation milestones, and previous rulings.

⁴ Comments from REECH and SMUD were filed late at our Docket Office, but were received in a timely basis by CBEE. We find that no party has been adversely affected by the delay and will accept the comments late-filed.

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clarifications recommended by the parties and on recommendations made by the Commission's contracting staff.

Before turning to the issues in this case, we want to commend CBEE for its commitment to providing significant and meaningful opportunities for public review of and comment on its RFP proposal. For several months prior to the RFP filing, CBEE worked with interested parties to explore issues, review options, and develop recommendations on how to implement the new policy objectives and administrative structure adopted by the Commission in D.97-02-014. CBEE directed its consultants to prepare issue papers, reports and memos on key issues to assist CBEE in reviewing options and developing recommendations. CBEE reviewed the various documents, discussed the issues at many board meetings, and sponsored two public workshops on October 1 and October 30, 1997. Issue papers and draft documents were distributed to the CBEE's Technical Advisory Committee, posted on CBEE's web site and made available for written comment and public discussion at CBEE meetings. This approach has provided CBEE, in developing its recommendations, and the Commission, in reviewing those recommendations, invaluable access to public input.

3. Policy Rules for New Program Development and Implementation [Rules I -VII]

Attachment 2 presents our adopted policy rules, marked to indicate all changes to CBEE's proposal.

In this section, we address issues raised by interested parties with respect to Sections I through VII of CBEE's proposed rules. These sections address 1) policy objectives, 2) roles and responsibilities under the administrative structure, 3) program design requirements and eligibility guidelines, 4) measures of value and performance, including cost-effectiveness 5) program design requirements and eligibility guidelines, 6) market assessment, evaluation and

performance measurement and 7) compensation and performance incentives for program administrators.

The common concerns that underlie comments made by parties on Sections I through VII are:

- 1. CBEE's proposed policy rules include market transformation activities that are broader than the Commission's objectives articulated in D.97-02-014 (Energy Pacific);
- 2. Market transformation is not sufficiently well-defined to provide a meaningful basis for designing, implementing and evaluating programs (Energy Pacific, RESCUE/ICA/SESCO);
- 3. The policy rules should rely primarily on measured energy savings in determining cost-effectiveness and in establishing funding allocation priorities (Energy Pacific, RESCUE/ICA/SESCO, Schiller, Sierra Club); and
- 4. Market participants, not public agencies, are the appropriate bodies to determine how best to meet the Commission's market transformation objectives, as well as whether they are being met (Energy Pacific, Sierra Club).

To address these issues, we first turn to the policy language of our previous decisions. In our Preferred Policy Decision (D.95-12-063, as modified by D.96-01-009) and in D.97-02-014, we articulated new policy objectives to guide energy efficiency program spending that replaces the former objective of resource acquisition. In the Preferred Policy Decision, we stated:

"The primary motive behind utility investment in energy efficiency has been to defer or avoid the high costs of new generation. However, in a restructured environment, evaluating cost-effectiveness on the basis of utility resource deferral may no longer be as relevant. The May proposals stated a preference for publicly funded energy efficiency programs to shift to those programs in the broader public interest, for example, programs with market transformation effects and education efforts that would not

otherwise be provided by the competitive market. We continue to prefer this two-track approach.

"We recognize that there are many definitions of market transformation and education activities, and we will not attempt to refine those definitions today. In general, it is appropriate to use public funding to ensure that energy users have information about managing their energy use.... It may also be appropriate to continue to provide financial incentives for energy efficient products and services. Any such financial incentives should be focused on transforming the market for energy efficient products and services; some examples of these activities are the Super-Efficient Refrigerator Program, and manufacturer rebates for compact fluorescent light bulbs and high-efficiency motors. We expect that public funding would be needed only for a specified and limited periods of time, to cause the market to be transformed." (D.95-12-063, as modified by D.96-01-009, mimeo., pp. 155-156; see also Conclusions of Law 82, 83, and 84.)

In D.97-02-014, we referred to the policy direction of the Preferred Policy Decision and further articulated our expectations regarding market transformation, as follows:

"Today, we reaffirm our commitment to ratepayer funding for energy efficiency as a transitional step toward the development of a fully competitive market in energy efficiency services. In our view, the mission of market transformation is to ultimately privatize the provision of cost-effective energy efficiency services so that customers seek and obtain these services in the private, competitive market.

"This will require a two-pronged approach. First, we need to promote a vibrant energy efficiency services private industry that can stand on its own. This will require programs that encourage direct interaction and negotiation between private energy efficiency service providers and customers, building lasting relationships that will extend into the future. Second, we need to promote effective programs that will simultaneously transform the 'upstream' market (e.g., manufacturers and retailers) so that energy efficient products

and services are available and advertised by private vendors and builders.

"... As described above, energy efficiency programs will be designed to transform the marketplace in order to reduce and eventually eliminate barriers to energy efficient solutions being adopted by providers and consumers of energy. Over the next four years, substantial money will be spent in support of this market transformation process. If these programs are successful in eliminating market barriers, they will no longer be needed. We choose to leave to future Commissions the determination as to whether market barriers remain, whether continued efforts to transform markets are required and whether continued ratepayer funding is warranted." (D. 97-02-014, pp. 21, 22.)

"Our focus for energy efficiency programs has changed from trying to influence utility decisionmakers, as monopoly providers of generation services, to trying to transform the market so that individual customers and suppliers in the future, competitive generation market will be making rational energy service choices." (D.97-02-014, Finding of Fact 1, p. 81.)

We reiterate our previous statements, in particular our commitment to cost-effective energy efficiency programs, market transformation goals, and the desire to ultimately privatize the provision of these services.

We observe that much of the debate over the specific language of the policy rules, including cost-effectiveness criteria, stems from a fundamental disagreement over what types of activities should be included and emphasized under market transformation. For example, those parties that recommend adoption of project-specific cost-effectiveness requirements, using measurements that are conventionally understood (e.g., energy savings), prefer that the "first prong" of the Commission's guidance in D.97-02-014 be promoted through standard performance contracting (SPC).

We reject this restrictive interpretation, and concur with CBEE that no element of the two-prong statement in D.97-02-014 or the text surrounding it

suggests that this should be construed as an exhaustive description of the activities or considerations for energy efficiency funding, or that the additional Commission guidance articulated in the Preferred Policy Decision should be ignored. We have reviewed the proposed policy rules, in particular Rule II-6, and find that the rules appropriately consider the various aspects of market transformation discussed in our policy decisions.

In view of our market transformation objectives, we find that CBEE's proposed changes in the definition and calculation of cost-effectiveness are appropriate. We note that our existing demand-side management (DSM) rules do not require that all programs individually pass a test of cost-effectiveness. They state that the reason for exempting certain programs is that energy savings are difficult to measure. Similarly, it would be imprudent to restrict market transformation funding to only those activities for which some measurements (e.g., energy) are less controversial.

CBEE's proposed cost-effectiveness rules ensure a broad portfolio of market transformation activities that meet the Commission's objectives. These rules echo the direction from the Legislature and this Commission that PGC-funded energy efficiency activities produce benefits in excess of costs. For example, Rule II-1 states that the goal of PGC-funded energy-efficiency programs is to provide in-state benefits through cost-effective energy-efficiency and conservation programs. Rule IV-1 requires as a threshold criterion for eligibility that the portfolio of proposed programs must be shown to be cost-effective on a prospective basis. Ongoing demonstration of continued expectations for cost-effectiveness of the portfolio (on at least an annual basis) is a condition for continued receipt of PGC funds. (Rule IV-3.)

Furthermore, nothing in the policy rules precludes this Commission from taking the cost-effectiveness of individual programs into consideration when we

review the annual program recommendations. (See Rules IV-4 and V-2.) As described in CBEB's filing, CBEE and the new administrators will jointly develop annual program plans and budgets to be submitted in the form of Advice Letter filings to the Commission by October 1 each year. We direct CBEB and the new administrators to provide program or project-specific (as appropriate) cost-effectiveness results (prospective) as well as the portfolio total cost-effectiveness when making this submission.

We also endorse CBBE's recommendations to conduct independent market assessment, program planning and program evaluation in developing recommendations to the Commission regarding future program design and funding allocation. Some parties suggest that placing funds at the disposal of private market participants in return for guaranteed energy savings (e.g., through the SPC program) is sufficient to ensure that the market will be transformed. We cannot draw any conclusions at this time on SPC's market transforming potential in California because until 1998 there has never been such a program in California. Nor do we believe it is possible at this time to identify the most or only appropriate ways in which to transform markets. In our opinion, reliance on private market participants to self-certify the consistency of PGC-funded activities with our overall market transformation objectives is simply inconsistent with minimal standards of accountability to ratepayers. Instead, we intend to ensure accountability by conducting independent analysis of the PGC-funded programs as we proceed to implement programs that promise market transformation effects. CBEE's proposed rules appropriately reflect this approach. (See Rules VI-1 to VI-4.)

As CBEE points out, the development of workable market transformation program planning, implementation and evaluation concepts will require more time and effort by CBEE and interested parties. We do not believe that the

should hold up the RFP process. This is not unlike the situation faced by the utilities immediately following our decision to authorize shareholder incentives for DSM. At that time, there were no accepted protocols for measuring energy savings. Absence of agreed upon protocols was not used as an excuse to hold up aggressive implementation of a broad portfolio of enhanced DSM programs. Instead, parties worked collaboratively and diligently through public workshops to develop protocols, which continue to be refined to this day.

CBEE has proposed a similar public workshop process for working out important implementation issues for PGC-funded activities, and we endorse that approach. (See Rules II-8, V-8, VI-4.) Attachment 3 presents an illustrative example of program development, planning and timelines using the joint planning process proposed by CBEE.

CBEE requests that we clarify the process by which updates to the policy rules should be made. After conducting the workshops, CBEE should file any proposed revisions to the rules adopted by today's order for our consideration as a Petition for Modification under Rule 47 of our Rules of Practice and Procedure. The Petition for Modification should be filed at the Commission's Docket Office and served on the Special Public Purpose service list in this proceeding or on the service list of any successor proceeding. Any revisions to the policy rules adopted today will be made by Commission decision.

However, one definition requires clarification today. In its proposed rules, CBEB includes renewable self-generation projects in its definition of energy efficiency and energy efficiency measures. (See Attachment 2, Appendix A.) This definition is also included in the proposed RFP and sample contract. NRDC objects to the inclusion of generation technologies, renewable or otherwise, in the definition of energy efficiency, stating that this expansion of definition represents

a significant change from the intent of the Legislature and this Commission. CEC notes that the inclusion of renewable self-generation in the definition of energy efficiency could exclude other valuable on-site measures from consideration and create possible overlaps or confusion, since renewable self-generation technologies are already eligible for surcharge funding through the Renewables program administered by the CEC. We find merit to these objections and eliminate renewable self-generation electricity projects from the definition of energy efficiency in both the policy rules and the RFP.

Should CBEE wish the Commission to reconsider inclusion of renewable self-generation in the energy efficiency definition after more public input and workshops, it may resubmit this recommendation under the procedures outlined above. We encourage CBEE to coordinate with the CEC on these matters. In making its recommendation, CBEE should specifically address the concerns discussed by CEC and NRDC in their December 10, 1997 comments, and any other concerns raised by participants at the workshops.

Several other issues regarding the proposed policy rules were raised by individual parties, including the roles and responsibilities of program administrators and other entities, treatment of state agencies in the bid process and access to utility-held information by providers and customers. (See Table 1 of CBEB's December 19, 1997 filing.) We have reviewed CBEB's responses to these issues, and concur with them, except as noted above.

In particular, the rules direct that separate residential, nonresidential and new construction administrators (total of three statewide) be selected to

⁵ We address the issue of access to information in our discussion of Rules VIII and IX in the following section.

administer energy efficiency programs. SMUD and Energy Pacific object to the separation of new construction from retrofit applications, and prefer an administrative structure with two statewide administrators: one for residential and one for nonresidential programs.

The development of CBEE's proposal with regard to number and organization of administrators has involved extensive analysis and public input. A wide range of options was considered, including SMUD's and Energy Pacific's preferred approach, in detailed issue papers prepared by CBEE's technical services consultants. These papers were presented and discussed at various public meetings and workshops during the fall of 1997. We have reviewed CBEE's analysis of options, and concur that of all the approaches considered, the combination of residential, nonresidential and new construction administrators is the most reasonable. This approach best balances the objectives of: 1) presenting each administrator with a scope of responsibilities that is limited enough to be within the capabilities of a wide range of entities, thus allowing for a substantial market response to the RFP, 2) limiting the risks attendant on the possibility that one or more administrators might fail to perform adequately, 3) keeping the total number of administrators small enough to lead to a manageable administrative assignment on the part of the CBEB, 4) ensuring that the responsibilities of each administrator are sufficiently clearly delineated to guard against the possibility of program gaps, overlaps and jurisdictional ambiguities; 5) giving the CBEE as many options as possible in tailoring the selection of administrators to the mix of skills across proposers and 6) ensuring that administrators' responsibilities are

^{*}Proposers would be allowed to bid on as many of these three positions as they wish, but the same entity will not be selected to be both the Residential and Nonresidential program administrator.

structured in a manner that reasonably approximates the manner in which actual energy efficiency markets are structured.

On the issue of state agency bidders, we believe that the role of program administrator, as defined by this Commission, is well suited to either public or private entities. To ban state agencies from bidding, as Schiller suggests, would inappropriately eliminate potentially qualified program administrators from consideration. However, we concur with CBEB that state agencies should be treated no different for purposes of the selection process and criteria or limitations on an administrator also performing implementation. Moreover, the RFP should reveal to other potential proposers that a state agency may submit proposals and receive an award.

On the issue of performance incentives for program administrators, we note that the proposed policy rules establish a two-part compensation structure, which includes both a base-level of compensation and a performance incentive. Rules VII-1 to VII-8 provide general guidelines on what forms of incentives, to be proposed by bidders, are considered appropriate. The revised policy rules proposed by CBEE on January 31, 1998 state that these incentives are to be included in the bidder's binding proposal for total cost caps, as discussed in the proposed RFP. (See Rule VII-1.) This clarification addresses our concern that the rules did not initially specify the inclusion of any performance incentives in the total award to winning bidders.

In its March 11, 1998 filing, CBEB raised the issue of funding for gas energy efficiency programs. We are in the process of exploring a gas surcharge mechanism and, in the interim, the guidance we have provided in D.97-02-014 is in effect. We prefer the approach taken in 1998. Gas utilities voluntarily worked with CBEB, used the interim policy rules for gas-funded activities, and combined electric and gas funding into single programs. In any event, today's adopted

policy rules are intended to apply to both electric- and gas-funded activities when the interim administration period is over.

Finally, regulated utilities should be barred from using ratepayer funds for preparation of bids, as this would give them an unfair advantage over other competitors. Any regulated utility that submits a bid for program administrator must certify that the source of funding for preparation of the bid did not involve ratepayer funding, including PGC, gas DSM or carryover funds.

4. Affiliate Rules and Code Of Conduct for Administrators [Rules VIII and IX]

As directed by D.97-09-117, CBEE's proposed policy rules include affiliate rules applicable to the administration of energy efficiency programs. CBEE's proposed rules also include a Code of Conduct that applies to an administrator's interaction with nonaffiliated persons, implementors and other entities. (See Rules VIII and IX.)

CBEE has attempted to coordinate the development of proposed affiliate rules for energy efficiency administration with the development of utility affiliate rules in Rulemaking (R.) 97-04-011/Investigation (I.) 97-04-012. Copies of the CBEE's proposed affiliate rules were served on the service list in that proceeding on November 24, 1997. On December 16, 1997, we adopted final utility affiliate rules. CBEE incorporated much of the language of these rules into its January 31, 1998 filing.

In the following sections, we 1) describe CBEE's proposed rules regarding the Administrator's Code of Conduct, 2) describe CBEE's proposed affiliate rules, 3) highlight the differences between CBEE's proposed rules and the affiliate rules adopted in D.97-12-088 and 3) consider CBEE's proposal and parties' comments in light of our overall policy objectives for energy efficiency program administration.

4.1 CBEE's Proposed Code of Conduct

CBEE's proposed Code of Conduct is included in Policy Rules VIII-1 to VIII-9, as revised in CBEE's January 31, 1998 filing. These rules require an administrator to:

- (1) use a corporate identification designated by the CBEE for PGC-funded tasks and efforts rather than its own corporate identification, unless permitted to do so by the CBEE (Rule VIII-2);
- (2) maintain separate books and records for PGC-funded activities according to generally accepted accounting principles (Rule VIII-3);
- (3) abstain from performing any program implementation function without the approval of the CBEE (Rule VIII-4);
- (4) abstain from tying access to PGC-funded activities to the purchase or use of non-PGC-funded products, services or programs offered for sale by the administrator (Rule VIII-5);
- (5) file a plan with the CBEE to ensure that nonpublic and confidential or proprietary information acquired in the performance of its duties from implementors and other market actors will be protected from misuse with said plan to be approved prior to acquiring such information (Rule VIII-6);
- (6) establish a nondiscriminatory process by which implementors may have access to utility customer information and other information received by the administrator if adequate customer privacy protections are included and approved by the CBEB (Rule VIII-7.); and
- (7) establish internal procedures for approval by the CBEB which ensure that the administrator will not unfairly discriminate in its treatment of any entity, market actor or implementor through the design, processing, evaluation and selection, administration of bids, requests or

negotiations of contracts or in the performance of any of the functions necessary to provide the scope of services required of an administrator (Rule VIII-8).

The rules incorporate the Code of Conduct as a provision of each administrator's contract. (Rule VIII-1.) The rules allow flexibility in applying a penalty to fit the violation of the Code. Under the proposed rules, an administrator's contract may be revoked for a violation of the Code of Conduct. (Rule VIII-9.)

4.2 CBEE's Proposed Affiliate Rules

CBEE's proposed affiliate rules are contained in Policy Rules IX-1 to IX-8, as revised in CBEE's January 31, 1998 filing. (See Attachment 2.) These rules apply to all administrators (utility or otherwise) and their affiliates involved in PGC-funded energy efficiency efforts and activities. However, several rules apply only to a utility administrator and involve access to utility information and regulatory oversight, including compliance with the Commission's affiliate rules adopted in D.97-12-088. (Rules IX-7(1) to (4).)

CBEE's affiliate rules limit participation in PGC-funded programs if those programs are overseen by an affiliated administrator. In such a circumstance, affiliates of that administrator may participate only in SPC programs and may receive (all affiliates in aggregate) no more than 15% of the PGC funds expended for implementation of those SPC programs. In response to comments, CBEE's RFP language also prohibits affiliates of an administrator (e.g., for residential programs) from also serving as an administrator (e.g., for nonresidential programs).' Otherwise, an affiliate of an administrator may

² See CBEE's proposed RFP filed on March 11, 1998, page I-2.

participate without limitation in any PGC-funded program administered by an unaffiliated administrator, and in any market activity for which it does not receive PGC funds

Two distinct provisions in CBEE's Code of Conduct rules are also included in CBEE's affiliate rules: (1) the requirement that a firm acting as an administrator use a corporate identification (name, logo, etc.) established by the CBEE rather than its own corporate identification when performing administrator functions and (2) the ability of the CBEE to authorize an administrator to share utility customer information with implementors without the prior affirmative written consent of the customer, if adequate customer privacy safeguards are established. With regard to the administrator's corporate identification, the rules permit its nondiscriminatory use by implementors (including the affiliates of an administrator) or by third parties, subject to CBEE approval. The firm selected to be the administrator may continue to share its private corporate identification with its affiliates to the extent otherwise permitted by law (e.g., subject to the affiliate rules adopted in D.97-12-088).

CBEE's proposed rules include nondiscrimination, separation, disclosure and information and oversight requirements similar to the Commission's use of such categories to develop its affiliate rules in D.97-12-088. These requirements apply to SPC programs in which affiliates of the administrator overseeing the SPC program are participating and receiving PGC funds. They apply to all administrators and their affiliates. Except as noted below, CBEE's proposed rules mirror the wording and scope of the Commission's rules for utilities and their affiliates. Following is a brief overview of these rules by type of requirement.

4.2.1 Nondiscrimination Requirements [Rules IX-6(1)-(6)]

These sections of the affiliate rules prohibit unfair discrimination by an administrator in favor of its affiliate(s) or against nonaffiliated entities for any tasks or activities performed as part of the Scope of Service for an administrator. These prohibitions include restrictions against an administrator providing leads to its affiliates or tying its services as an administrator of PGC funds to a requirement to take or purchase non-PGC funded goods and services that it also offers. These requirements directly parallel and mirror provisions in Part III. A of the affiliate rules adopted in D.97-12-088.

4.2.2 Separation Requirements [Rules IX-6(7)-(18)]

This section of the CBEE's affiliate rules also employs separation requirements to mitigate the potential for affiliate interest abuse. The language of this section, except as noted below, closely parallels the requirements imposed by the Commission in the utility affiliate rules (Part V). Consistent with Section V.F of those rules, an administrator cannot trade upon, promote or advertise its affiliate's affiliation with the administrator, or vice versa, except as permitted by the CBEE. (Rule IX-6(14).) Similar to Sections V.A and B. of the Commission's utility affiliate rules, CBEE's proposed rules require an administrator and affiliates to be separate corporate entities and to maintain separate books and records, subject to CBEE and Commission review. (Rules IX-6(8) and (9).) Also consistent with D.97-12-088 (Parts V.C and G), the proposed rules prohibit the sharing of employees, facilities and equipment except for corporate support. (Rule IX-6(7) and (10).)

However, some of CBEE's proposed separation requirements differ from those adopted in D.97-12-088. In particular, the utility affiliate rules do not bar affiliates from using the name and logo of a regulated utility. Instead,

the Commission required utility affiliates to provide disclaimers that clearly indicated to customers that a regulated utility and its affiliates were not the same company and that a regulated utility could not discriminate in favor its affiliates.

CBEE's proposed rules regarding corporate identification take a different approach, one that CBEE considers to be consistent with the desired role of administrators in the energy efficiency market. Under CBEE's proposal the firms selected as program administrators are identified under a generic statewide identification (name, logo, service mark or "brand") when acting as the administrator, rather then under their private corporate identifications. CBEE's proposed rules allow for co-branding, but only in situations deemed appropriate by CBEE. Similarly, CBEE's affiliate rules prohibit affiliates of administrators from using the generic identification except to the extent that the CBEE also permits other implementors to use such identification. (Rules IX-6(13), (14).)

In addition, CBEB's proposed rules prohibit the transfer of employees performing administrator functions to an affiliate implementor or affiliate operating in energy efficiency markets in California. (Rule IX-6(18).) The utility affiliate rules (Part V.G.2.) permit transfers of a utility employee to an affiliate, but establish limitations and rules surrounding that transfer. In particular, the utility affiliate rules prohibit the employee from removing or otherwise providing information to the affiliate which the affiliate would be precluded from having pursuant to those rules.

CBEE's proposed rules also differ with regard to joint purchases of goods and services. The rules applicable to utility affiliates (Part IV.D.) permit the joint purchase of goods and services by a utility and its affiliates in certain circumstances (e.g., purchase of office supplies or telephone service but not marketing), whereas CBEE's proposed language would prohibit joint purchases without the approval of CBEE. (Rule IX-6(12).) In addition,

CBEE's proposed Rule IX-6(11) broadens the examples of services that may not be shared by Administrators with their affiliates to include state and federal regulatory affairs, legal, and lobbying efforts.

In the area of joint marketing, however, CBEE's proposed separation requirements are less restrictive than those adopted in D.97-12-088, which prohibit a utility from joint marketing with its affiliates. CBEE proposes to allow such joint marketing upon prior approval by CBEE, and if such marketing is available to third parties on the same terms as the affiliates. (Rule IX-6(16).)

4.2.3 Disclosure and information Requirements [Rules IX-6(19)-(22)]

With one exception, the CBEE rules parallel the disclosure and information requirements adopted by the Commission in Part II of its affiliate rules. The specific provisions require an administrator to provide or share nonconfidential information on a nondiscriminatory basis in terms of access, timing and content with its affiliates, other implementors and third parties. The major difference is that the CBEE rules allow implementors to receive utility customer information without prior affirmative written consent of customers if adequate customer privacy safeguards have been established and approved by the CBEE. (Rule IX-6(20).)

4.2.4 Oversight Requirements [Rules IX-6(23)-(24)]

These two CBEB rules require an Administrator to maintain records available to the CBEB, Commission and public concerning affiliate transactions and to have an annual audit prepared to verify compliance with the rules, consistent with the provisions of D.97-12-088.

Rule IX-6 requires that the affiliate rules be incorporated into the administrator's contract, making them enforceable as an element in that contract. Violation of these rules is subject to penalty, which may include disqualification from participation in all PGC-funded efforts. (Rules IX-3 and IX-5.)

4.2.5 Definitions

CBEE has used the definitions set forth in the D.97-12-088, with one exception. The definition of "affiliate" differs from that adopted for utility affiliates in two respects. First, in response to comments, CBEE has added some language to the definition to clarify and ensure that the definition of affiliate applies to successive chains of ownership and control. Specifically, the Commission's rules in D.97-12-088 include the sentence: "A direct or indirect voting interest of 5% or more by the utility in the entity's company creates a rebuttable presumption of control." CBEE proposes the following language: "A direct or indirect voting interest of 5% or more by the administrator, its subsidiaries, or its affiliates in an entity's company creates a rebuttable presumption of control."

Second, the definition of affiliates in D.97-12-088 addresses elements that are unique to a regulated utility and its affiliates, such as a utility holding company. Those aspects of the definition have been eliminated in CBEE's proposed rules.

4.3 Discussion

Before addressing the issues raised by CBEE's proposed Code of Conduct and affiliate transaction rules, we first summarize parties' comments on those rules. Our discussion that follows takes these comments into consideration.

PG&E argues that CBEE should utilize the Commission's affiliate rules adopted in D.97-12-088, rather than include additional restrictions or conditions on transactions between new program administrators and their affiliates. In particular, PG&E objects to the proposed restrictions on the use of

the administrator's logo by affiliate implementors. SDG&E is concerned that uncertainty over the size of the SPC program (the only program that may be implemented by affiliates of the new administrators) may limit bids from certain entities.

Other parties express concern that CBEE's proposed rules do not go far enough to mitigate potential market power abuse. RESCUE/ICA/SESCO recommend that the rules include cross-funding restrictions so that, for example, the residential program administrator cannot award funds that it administers (for SPC or non-SPC programs) to the nonresidential administrator's affiliated energy service company. RESCUE/ICA/SESCO and NAESCO urge the Commission to establish market limits on the participation of affiliates of a regulated utility whether or not the utility is an energy efficiency program administrator.'

As we noted in D.97-09-117, the issues to be addressed with regard to affiliate transactions in this proceeding differ from those we considered in R.97-04-011/I.97-04-012. (D.97-09-117, mimeo. p. 45.) Here we are considering rules that 1) apply to utility and nonutility entities selected to administer energy efficiency PGC funds and 2) address circumstances where an affiliate may receive PGC funding for its market activities. Moreover, our objectives in this particular proceeding are unique to the nature of the programs being administered under

In its January 31, 1998 filing, CBEB made several modifications to its initial affiliate rules based on comments received, including (1) adding language to clarify that successive chains of ownership and control are covered by the definition of "affiliate"; (2) clarifying in its rules that CBEB intends to create a distinct corporate identification for PGC-funded programs overseen by administrators; and (3) adding language to ensure that a utility administrator is not inappropriately required to comply with two conflicting sets of affiliate interest requirements. In addition, CBEB clarified in its proposed RFP that affiliates of an administrator cannot also be an administrator.

the Boards' direction and the administrative structure we are trying to create. Specifically, the focus of affiliate transaction rules in this context is to balance two objectives: 1) maximizing the number of potential proposers to be administrators or implementors and 2) ensuring that vibrant competitive energy efficiency markets develop during the transition from utility administered programs to independent administration. Therefore, CBEE's affiliate rules for the new administrators should be crafted to best promote the appropriate balance between these two objectives, allowing for some differences between the policy rules and the rules set forth in D.97-12-088, where appropriate.

With these goals in mind, we address the issues raised in this proceeding with respect to the administrator's Code of Conduct and affiliate rules.

4.3.1 Eligibility of Affiliates for PGC Funds

The affiliate rules we consider today must address a potential abuse that does not arise in our more generic consideration of market participation by utility affiliates, i.e., preventing an administrator from inappropriately awarding PGC funds to its affiliates. This consideration is different from the issue of whether a utility affiliate can participate in energy efficiency services in the private market. CBEE's limitations on the potential receipt of PGC funds do not prevent affiliates of an administrator (utility or otherwise) from operating in energy efficiency markets.

CBEE's proposal to limit the market share of affiliates of an administrator for the receipt of PGC funds represents a reasonable balancing of the objectives articulated above. An affiliation between firms where one firm is disbursing public funds creates a large potential for self-dealing, preferences for affiliates and inefficient economic choices. In addition, the transition from utility-administered programs to market-based energy efficiency efforts will be

aided by the ability to evaluate and assess performance. This requires openness by implementors to provide information to program administrators. To the extent that the administrator is perceived as the adjunct to a competitor, it is unlikely that accurate information will be forthcoming from implementors, thus constraining any transition. For these reasons, we reject PG&B's arguments that the utility affiliate rules adopted in D.97-12-088 should serve as our affiliate rules for PGC-funded energy efficiency programs. These rules must be augmented to limit the eligibility of firms to receive PGC funds from affiliated administrators. CBEE's proposal does this in a manner that meets our objectives and is practical to implement, given the level of resources available to perform effective oversight of affiliate transactions.

RESCUE/ICA/SESCO and NAESCO recommend limitations to nonutility and utility affiliate participation that go beyond CBEE's proposal. We recognize that the issue of utility and utility affiliate market power is a matter of concern for all markets, including energy efficiency. However, this issue should be addressed by monitoring utility (and affiliate) market share over time and revisiting the rules as necessary, as we intend to do in our ongoing consideration of utility affiliate rules. (See D.97-12-088, page 87; Conclusions of Law 10 and 11.) Concerns about potential favoritism by one administrator vis-a-vis the affiliate of another are more appropriately addressed through the Code of Conduct rules. Imposing stricter affiliate limitations at this time would unduly compromise the goal of maximizing the number of potential proposers to be administrators and/or implementors.

Accordingly, we adopt CBEE's recommendations regarding the limitation of affiliate involvement in PGC-funded energy efficiency programs (Rules IX-3, IX-4 and IX-5). However, as discussed further below, we make certain changes to remove references to CBEE where those references

1) inappropriately delegate decision making authority to CBEE or 2) prematurely conclude that CBEE can receive reimbursement funds or enter into contracts.

4.3.2 Corporate Identification

Rules related to the corporate identification of energy efficiency administrators and their affiliates must be considered in context. In this proceeding, the context concerns the identification of market transformation programs funded by ratepayers. As we have stated in previous decisions, our goal is to transform the energy efficiency services market such that publicly-funded programs will become unnecessary over time. (See, for example, D.97-02-014.) In this context, energy efficiency program administrators are acting under contract to perform specific functions that will achieve our market transformation goals. They are not acting as firms providing products and services directly to customers. This distinguishes the rules we consider today from those considered in D.97-12-088.

Given the context for today's rules, we must be careful not to create an unfair advantage for any one entity in the energy efficiency market through the use of corporate identification. CBEE's approach to corporate identification is the best means of facilitating the transition to a fully competitive energy efficiency market. In particular, it would be unfair and inappropriate to use PGC funds to create a new competitive advantage for a firm or its affiliates because of its status as an administrator that disburses PGC funds.

Accordingly, we adopt CBEE's proposed rules for corporate identification of an administrator, affiliate or implementor, as set forth in Rules VIII-2, IX-6(13) and (14). We make minor language changes to these rules to clarify the role of CBEE in their implementation.

4.3.3 Access to Information

CBEE's proposed rules regarding access to customer information by program implementors differ from the utility affiliate rules adopted in D.97-12-088. However, they are consistent with our resolution of this issue for 1998 energy efficiency programs. In D.97-12-103, issued on the same day as D.97-12-088, we recognized that an approach that requires customer consent prior to release of customer information "may be unworkable for certain DSM applications and marketing approaches." (D.97-12-103, p.23.) For this reason, we directed the interim utility administrators to make customer billing records available to contractors under the standard performance contract program and other programs subject to competitive bid under certain circumstances. First, the contractor must document its need for such records based on the specifics of its program implementation or marketing plan and, second, the utility must make appropriate security arrangements with the contractor to protect the confidentiality of these records. If these conditions are met, the utility will develop specific procedures for providing customer records to the contractor, at cost. We directed that these procedures would apply to contractors serving under the new administrative structure, until further notice. (D.97-12-103, Ordering Paragraph 8.)

Achievement of our energy efficiency goals requires a nondiscriminatory process that allows access to certain customer information without prior contact with a customer, but with adequate customer privacy protections. Our directives in D.97-12-103 did not explicitly state that any utility customer information received through this process may be used only for PCG-funded programs and purposes, as CBEE now recommends. This restriction is appropriate to ensure against potential abuses by power marketers or potential attempts to circumvent our utility affiliate rules regarding access to

customer information. Accordingly, we will adopt CBEB's proposed Rules VIII-7 and IX-6(20), with modifications that clarify the approval process for ensuring nondiscrimination and customer privacy protection.

CBEE's proposed Rule VIII-6 addresses the issue of an administrator's access to information from implementors or other market actors. Such information must be obtained and used in a manner that protects nonpublic and confidential or proprietary information. We adopt CBEE's proposal that the administrators submit a plan before acquiring information from implementors and other market actors, but clarify that the Commission, and not CBEE, will approve such a plan.

4.3.4 Transfer of Employees

CBEE argues that a complete prohibition of transfers between an administrator's employees and its affiliates is necessary to ensure against the potential transfer of sensitive information to affiliates, as perceived by nonaffiliated implementors. We disagree. Our utility affiliate rules regarding this issue appropriately address concerns regarding cross-subsidization, competition and inappropriate transfer of information. These rules prohibit sharing of employees (joint employment) between the utility and an affiliate, and prohibit temporary or intermittent assignments to utility affiliates. The rules prohibit any utility employee hired by an affiliate from removing or otherwise providing information to the affiliate which the affiliate would otherwise be precluded from having pursuant to the rules. They also require that the utility track and report all employee movement between the utility and affiliates. Moreover, once an employee of a utility becomes an employee of an affiliate, the employee may not return to the utility for a period of one year.

We will modify CBEB's proposed rules to be consistent with the safeguards provided under Part V.G.2. of our utility affiliate rules.

4.3.5 Joint Purchases and Joint Marketing

CBEE's proposed rules recognize that joint purchases of goods and services by an administrator and its affiliates may be appropriate in certain circumstances, but require that such purchases be approved by CBEE. We prefer the approach taken in our utility affiliate rules, and will modify the language of Rule IX-6(12) to permit joint purchases except for those in association with the provision of energy efficiency services to customers.

We agree with CBEE that there are valid reasons why an administrator and implementors (including affiliates of an administrator) may wish to pursue joint marketing to promote PGC-funded efforts. Accordingly, we adopt CBEE's proposed Rule IX-6(16), with clarification that such joint marketing of services is subject to Commission approval.

- 4.3.6 CBEE's Role and Authority

Throughout CBEE's proposed rules on Code of Conduct and affiliates, there are references to CBEB's role in the implementation and enforcement of these rules. We have modified many of these references to clarify where CBEE's role is to make recommendations for approval by the Commission. Unless otherwise stated in this decision or the adopted rules, CBEE shall request Commission approval by filing an Advice Letter and serving that Advice Letter on the Public Purpose service list in this proceeding or on the service list of any successor proceeding. Commission approval will take the form of a Commission resolution.

4.3.7 Reporting of Market Share Information and Future Consideration of Market Share Limitations

As discussed in Section 3 above, we anticipate that the policy rules adopted today will be updated after the public workshop on implementation issues for PGC-funded energy efficiency activities. In addition, as we move toward increasing transformation of the energy efficiency market, we anticipate that the market will be changing. It is necessary to ensure that the Commission reviews the policy rules and, in particular, the affiliate rules contained therein, as we obtain more information about the market and its participants.

To this end, the utilities and administrators (utility or nonutility) should report to CBEE and the Commission additional information which could be useful in this review. Such information should include market share statistics of utilities, utility affiliates and other entities providing energy efficiency services. It should include the number and dollar value of contracts between utility and nonutility administrators and 1) their affiliates, including affiliates operating in program areas administered by nonaffiliated administrators, and 2) other entities providing energy efficiency services in the market.

Within 120 days from the effective date of this decision, CBEE should submit recommendations concerning the type of market share information to be submitted by the utilities and by administrators (utility and nonutility), and propose a procedural schedule for the submission of this information to CBEE and the Commission. CBEE should solicit public comment on its proposal prior to submitting its recommendations. CBEE should file its recommendations at the Commission's Docket Office and serve copies on the Special Public Purpose Service List in this proceeding or on the service list of any successor proceeding. Interested parties will have 15 days to comment. The assigned ALJ, in consultation with the Assigned Commissioner, will issue a ruling to establish the reporting requirements and filing schedule.

In its December 19, 1997 and January 31, 1998 filings, CBEB states that it plans to address the propriety of market share limitations in the

development of 1999 program design and development, rather than through the policy rules. According to CBEE's procedural recommendations, these program plans would be proposed by Advice Letter. As discussed above, we adopt CBEE's procedural recommendations for program development and planning. (See Attachment 3.) To ensure that all interested parties have an opportunity to review CBEE's program design recommendations, including any proposed market share limitations for specific programs, CBEE and administrators should serve the Advice Letter filing on 1) the Special Public Purpose service list in this proceeding or the service list of any successor proceeding and 2) any other individual or organization that sends a written request to CBEE to be served.

5. RFP for Administrators and Contracting Process

The following sections present an overview of CBEE's proposed RFP and contracting process for program administrators. They are based on CBEE's November 24, 1997 filing, as revised in CBEE's January 31 and March 11, 1998 supplemental filings.

Section 5.1 describes the role of program administrators relative to other market participants. Section 5.2 describes the joint planning process among CBEB, program administrators and other market participants that will determine annual funding priorities for energy efficiency programs. These two sections provide the institutional framework for program administrators and energy efficiency program development.

Section 5.3 describes the bidder requirements and selection process contained in the RFP, including a description of the sample contract.

Section 5.4 presents our consideration of parties' comments and determinations regarding CBEE's proposed RFP and contracting process.

5.1 Role of Program Administrators and Scope of Services

CBEE proposes to organize the energy efficiency program administrators into three program areas: 1) the residential administrator will oversee programs intended to encourage the adoption of energy efficiency measures by the owners and occupants of existing residential buildings; 2) the nonresidential administrator will oversee programs that encourage energy efficiency in existing nonresidential buildings and 3) the new construction administrator will oversee programs that encourage energy efficiency measures in newly constructed buildings and major additions, both residential and nonresidential.

CBEE describes the role of program administrators relative to CBEE, its technical support, and program implementors (i.e., entities delivering energy efficiency services under the direction of program administrators) in its proposed RFP. The following is a summary of the responsibilities of each of these entities, and the manner in which the CBEE envisions them interacting. Attachment 4 presents an overview of these responsibilities in tabular form, including a description of areas in which the administrator has 1) no direct role in implementation and 2) may have a role in nonadministrative functions on a case-by-case basis.

(a) CBEE (Advisory Board to the Commission)

The CBEE will have overall responsibility for overseeing energy efficiency programs under the direction of the Commission, including: (1) overseeing the development of PGC-funded energy efficiency policies, programs, and budgets; (2) overseeing program administration, the assessment and verification of administrator performance, and administrator compensation and performance incentives; (3) overseeing the transition process from the interim administrators to the new program administrators; (4) overseeing analysis tasks performed by CBEB technical support, including strategic planning, market assessment, market characterization, and

program evaluation; (5) making recommendations to the Commission on policy and program issues; and (6) overseeing the preparation and submittal of reports to the Commission. The CBBE will also play an active role in providing guidance regarding what kinds of programs should be developed and in ensuring the compatibility of programs offered by different administrators.

(b) CBEE Technical Support

The responsibilities of the CBEB technical support will include: (1) assisting the CBEB in the tasks described above; (2) performing analysis tasks useful to and identified by the CBEB, including strategic planning, market assessment, and program evaluation; (3) providing information that Administrators can use to assess and verify implementor performance and implementor performance incentives; (4) developing and drafting the CBEB recommendations to the Commission on policy and program issues; and (5) assisting the CBEB in the preparation and submittal of CBEB reports to the Commission, in the oversight of reports prepared and submitted by the administrators, and in the oversight and preparation of reports submitted jointly by the CBEB and program administrators.

A special class of CBEB technical support analysts (or entities) of particular interest is the analyst or analysts charged with performing the key analytic functions described in (2) and (3) of this subsection. Such analysts or entities are referred to as "analysis agents" in the RFP.

(c) Program Administrators

The primary responsibilities of program administrators shall include: (1) facilitating program development, planning, and budgeting; (2) administering and overseeing program implementation; (3) helping to facilitate the transition from interim administrators; (4) providing reports on the results of these activities to the CBEE and the Commission; and (5) providing general program administration and coordination services.

(d) Implementors

The responsibilities of implementors will vary with the type of program, but will generally include the following: (1) participating in program development and joint planning processes led by program administrators; (2) implementing programs and activities agreed to under contract with either the program administrator or the CBEE; (3) working cooperatively with program administrators to resolve any customer complaints; and (4) providing periodic market data and program reports to administrators.

CBEE specifically limits the role of administrators in program implementation. (See Attachment 4.) In particular, program administrators are to have no direct role in implementation functions involving project development, agreements with customers or the delivery of energy efficient solutions. However, they may, on a limited case-by-case basis, have a role in implementation and other nonadministrative functions that do not involve these activities.

It may be decided that a useful program is the bulk procurement of a specific technology from manufactures in exchange for the manufactures agreement to incorporate improvements into the technology. This program might be implemented as other programs are, through the use of an implement that would be contracted with the CBEB to implement the bulk procurement program. Alternatively it may make sense for the Administrator to play a more direct role in the implementation of such a program. Additionally, the administrator may also have a more direct role in the implementation of providing incentives to "upstream" market actors (e.g. retailers, contractors, design professionals, distributors and manufactures) to encourage efficiency improvements in existing technology or the development of new technologies. In the area of mass advertising the administrator may, likely through a subcontractor, play a direct role in the implementation of mass advertising and

public relations or it may rely upon an implement to carry out the mass advertising and public relations programs.

We remain cautious about any broadening of the Administrator' functions beyond Administration. Attached at Attachment 4 (page 2) has a list of areas of program implementation where the Administrator can play no direct role in implementation and a list of program where the Administrator may have a limited direct role in implementation on a case-by-case basis, subject to our approval. Where the CBEE wishes the Administrator to take on these implementation functions it should make such a request directly to the Commission and justify why it seeks a waiver to the general policy that the Administrator(s) should play no direct role in the implementation of programs. The fact that the market will not provide the service is not sufficient justification. The role of this our energy efficiency program is to have energy services delivered that the market would not otherwise provide. Additionally, simply determining that a program is best implemented by a single entity is again not sufficient to justify the administrators role in implementation. If it is the case that a single entity would perform the function better than multiple implementers then only one implement need be selected. Generally, if the Administrator is going to perform an implementation function via a subcontractor then the question is raised as to why the program is being done by the Administrator and not by a third party implementer.

All bidders must complete a proposed work plan for each program area for which they are proposing to be the program administrator. In its proposed RFP, CBEE describes a minimum scope of services that bidders must agree to perform, as well as the services to be provided that are unique to each program area. These requirements are presented in Attachment 5.

5.2 Joint Planning Process and Development of Annual Program Budgets

CBEE presents an illustrative budget by program area for 1999, and describes the joint planning process by which annual funding levels by program area will be established by the Commission. (See Attachment 3.) CBEE foresees at least two different administrative arrangements under which new programs are developed. The first is identified as "CBEE or Administrator-Defined Programs," where the administrator works with the CBEE and other parties to develop a program concept. The administrator would facilitate the joint planning process by which this concept is transformed into an implementable program, be responsible for competitive selection of implementors and oversee program implementation.

Under the second, "Third-Party Programs" administrative arrangement, third parties submit proposals for program concepts in response to a solicitation, and the program administrator coordinates the assessment of each program concept. If the concept is found worthy, the administrator facilitates the process of transforming the concept into a specific program. Once the program is ready to implement, it is overseen by the program administrator in much the same way that CBEE/administrator-defined programs are, and implemented either by the entity initially proposing the concept or by another entity identified by the proposer.

As illustrated in Attachment 3, at the beginning of each year CBEB will identify priorities and emphasis areas with input from administrators, implementors, parties and market participants. Based on this guidance, the program administrators will conduct assessments of existing programs to determine whether or not they should be continued, modified or discontinued. The program administrators will also develop and issue RFPs for third-party proposals, and make recommendations on which proposals to fund. In addition,

the program administrators will facilitate the joint planning process to develop new program concepts and designs outside of the third-party proposal process. Based on these activities, the program administrator will propose and submit a program plan, including program descriptions, program performance indicators and program area budgets, to CBEE, around August 15 of each year. CBEE will solicit public comment on the proposed program plan and budgets during August and September. By September 15, CBEE will approve a final recommended plan and budget and submit those by October 1 of each year to the Commission by Advice Letter. Upon Commission approval, the administrators and program implementors would prepare for implementation.

5.3 Bidder Requirements and Selection Process

Under CBEE's proposed RFP process, each potential bidder must submit a notice of intent to submit a proposal by a specific date. CBEE added this requirement to enable the procurement official to compile a list of interested bidders and notify that list of any changes in the RFP or RFP timetable.' However, CBEE proposes that any notice of intent be kept confidential until after the submission of final proposals in order to encourage the maximum number of potential bidders.

A bidder may, at its option, submit a draft proposal as well as a final proposal. The draft proposal step is designed to enlarge the pool of qualified proposers by identifying administrative and clerical errors that could otherwise cause a final proposal to be rejected for ministerial reasons. A list will be prepared to highlight the following types of errors or inadequacies discovered in the draft proposals: 1) clerical or computational errors; 2) ministerial errors such

^{*}The Commission will identify the contracting party or procurement official for this RFP by subsequent Commission order.

as failing to include a mandatory form; 3) failure to respond to a mandatory, threshold or administrative requirement and 4) failure to provide information to fully score a proposal (e.g., an inadequate or incomplete response in terms of a work plan). There will be no attribution of any specific error to a specific proposal and no discussions with individual proposers. The names of entities submitting a draft proposal will not be made public or available to the CBEE until after submission of final proposals.

To be considered for selection as a program administrator, a bidder will have to submit a compliant final proposal and receive a minimum number of points in total and within each of the scoring attributes. There are a total of 200 possible points to be used in the scoring of qualified proposals in the RFP. The major scoring attributes, possible points and points as a percentage of total points for each major scoring attribute are as follows:

1. Capability (80 points possible: 40% of total points): This element of the scoring criteria requires a proposer to demonstrate that it has both (1) the management and organizational capability and project team skills to successfully perform the required services (24 points

In response to comments, CBEB modified the possible points and weighting as indicated above.

¹⁰ If a bidder files for more than one program area, a compliant final proposal is required for each.

[&]quot;In its November 24, 1997 submittal, CBEE proposed the following weights for selection criteria:

^{1.} Capability (90 points possible; 45% of total points)

^{2.} Cost (60 points possible; 30% of total points)

^{3.} Understanding and Approach to Scope of Work (50 points possible; 25% of total points)

possible) and (2) the demonstrated experience which indicates that it has and can successfully perform the required services (56 points possible).

- 2. <u>Cost (60 points possible: 30% of total points)</u>: This element of the scoring criteria compares proposals on the basis of proposed caps that apply to compensation over the contract life.
- 3. <u>Understanding and Approach to Scope of Work (60 points possible: 30% of total points)</u>: This element of the scoring criteria is evaluated on the basis of:
 - a) demonstrated understanding of the Commission's policy goals and the role of the administrator in achieving these goals (7 points possible);
 - b) overall proposed approach to and work plan for performing the scope of services (25 points possible);
 - c) proposed approach to defining markets or market segments and a demonstrated understanding of how specific markets or market segments operate (8 points possible);
 - d) proposed performance incentive mechanisms for program administrators (12 points possible);
 - e) proposed approach to measuring administrator, implementor and program performance (8 points possible).

To demonstrate capability, the bidder must provide general business information, including a management and organization chart of the proposal organization and team and all proposed agreements between bidder and subcontractors. The bidder must also provide three years of financial statements for the firm and any partners or subcontractors, and provide the qualifications

and experience for the firm and key personnel. References from previous projects are also required.

To compare and score proposals on the basis of costs, bidders must propose two cost caps that will apply to their compensation over the contract life. The first is a cap on maximum fully loaded average hourly labor rates, including wages, benefits and performance-based compensation paid to employees, as well as a prorated share of company overhead, general and administrative expenses and profits. The second is a cap on the ratio of total compensation paid to each administrator for administrative services to the total costs of program activities the administrator is responsible for, including costs associated with proposed performance incentive mechanisms. Actual compensation paid will be based on specific rate schedules submitted by program administrators and approved by CBEB, on the actual hours of work performed, and on the direct costs incurred and approved. However, in no case shall total compensation exceed the caps specified by each program administrator in its original proposal.

To demonstrate its understanding and proposed approach to the scope of services, bidders must discuss their understanding of California's policy objectives regarding energy efficiency, and the role of the administrator in helping to pursue these objectives. They are also required to provide a work plan that specifically details how they will accomplish each task and subtask set forth in the scope of services described in Attachment 5, and describe proposed approaches to market segmentation." In addition, for five selected key subtasks, bidders must describe in detail:

¹² Market segmentation is the process of separating markets into groups of customers with similar needs (e.g., for a particular product or service) or characteristics (e.g., renters as opposed to homeowners) who are likely to exhibit similar behavior in purchasing or adopting energy efficiency products, services or practices. The purpose

- 1. The approach they propose to use to accomplish the task, as well as the rationale for this approach,
- 2. Why the approach to these subtasks is likely to have a more significant effect on the administrator's success than the subtasks not chosen and
- 3. Contingency plans for the manner in which the proposed approach may be modified if other parties do not behave as expected, if the overall policy environment changes or if the nature of the programs being overseen by the administrator changes.

Bidders will also be evaluated based on their proposed performance incentive mechanisms. The RFP includes the guiding principles that bidders should follow in developing proposed incentive mechanisms, as well as the information bidders must provide regarding those mechanisms. Bidders are required to specify the maximum percentage of total compensation to be paid that is not linked to superior performance. Smaller percentages will increase the score given to the performance incentive component of the bidder's approach. The overall score given to each bidder's performance incentive approach will take into account this factor and the substantive attributes of the proposed mechanism or mechanisms. In addition, because the manner in which administrator, implementor and program performance is measured is likely to have a substantial effect on program administrators, the bidder's proposal for measuring all three levels of performance is included in the evaluation criteria. Attachment 6 sets forth the RFP score sheet proposed by CBBE.

of market segmentation is to identify factors that allow an entity to influence customers' decisionmaking or behavior for the purchase of energy efficiency products and services or the adoption of energy efficiency practices.

All final proposals will be initially reviewed by a screening committee established by the CBEE. Such review shall include an initial scoring of the final proposals. Proposals that receive a total of at least 140 points (70% of total possible points) and have a score of at least 50% of possible points for the capability attribute will be deemed responsive final proposals which meet the formal requirements of the RFP.

All responsive final proposals will be submitted by the screening committee to the CBEB for final scoring and selection based on the scoring attributes and possible points for each attribute set forth in the RFP. The CBEB will be the final evaluation committee for all responsive final proposals. The highest scoring responsive final proposal in each program area (nonresidential, residential or new construction) will be recommended by the CBEB to the Commission for a grant of award as the program administrator in that program area.

CBEE's proposed RFP includes a model contract, which provides both the general terms and conditions under which the winning proposer will conduct business with the CBEB, as well as the particular terms that apply to the program administrator position for which the proposer is selected. The initial term of the contract between the selected program administrator and the CBEE is through December 31, 2001, with the CBEB retaining the option to extend it for an additional 24-month term. In the event of contact breach, CBEE may terminate the contract upon 20 days' written notice, subject to Commission approval. CBEB may also terminate the contract for any reason, with or without good cause, after giving the administrator 90 days' written notice. The contract will include the cost caps, scope of services and work plan presented by the winning bidders to define expected performance and costs. The contract also provides for protection of confidential data and ownership by the Commission

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and/or State of California of all data and intellectual property resulting from performance under the contract.

Bidders are required to agree to all of the terms of the contract.

There are no opportunities to negotiate changes to the contract terms. Winning bidders will sign the contract after the selection of award.

5.4 Discussion

In its December 19, 1997 filing, CBEB provided summaries of parties' comments with a summary of its responses. CBEE has agreed to many of the recommended revisions and clarifications requested in those comments, and has incorporated them into the revised RFP package, filed on March 11, 1998. In particular, CBEE has modified the RFP and sample contract to:

- Better organize the RFP package to make it easier for potential proposers to understand what they were required to submit in response to the RFP;
- Provide more details on the joint planning processes and schedule, the transition process in 1998 and reporting requirements;
- Clarify the relationship and division of responsibilities between administrators and CBEE technical support regarding market assessment and evaluation activities;
- More fully describe the dispute resolution process and administrator's role;
- Clarify the roles of administrators in limited implementation and other nonadministrative functions;
- Revise the program area-specific scope of services and prescribed programs, including the role of administrators in energy center programs;

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- Clarify that the RFP is intended to include industrial and agricultural applications;
- Redistribute the points between the Capability and Understanding scoring attributes and provide greater specificity to work plan/approach required of bidders;
- Clarify that CBEE's ability to disapprove substitution of employees is limited to key employees only;
- Add a specific opportunity to cure for breach of contract and a requirement for Commission approval of contract termination;
- Revise the term of the contract to coincide with the funding term provisions of Public Utilities Code Section 381(c)(1);
 and
- Clarify that additional compensation will be paid for services which are beyond the scope of the tasks identified in the contract.

We have reviewed all of the comments and CBEE's responses, and find that CBEE has incorporated those suggestions that are most workable and consistent with our policies established in D.97-02-014 and subsequent decisions. We also concur with CBEE's rejection of certain proposals by commenting parties. In particular, we agree with CBEE that it would be contrary to our policies to include the selection and supervision of what CBEE terms "analysis agents" in the administrator's scope of services, as suggested by Schiller Associates. In D.97-09-117, we directed CBEB to have independent analysis capability, rather than delegate that function to the program administrators. (See D.97-09-117, mimeo., p. 31, Conclusion of Law 21 and Ordering Paragraph 17.)

We note the comments of Energy Pacific which suggest a potential for conflict-of-interest for Board Members in the selection of analysis agents.

Energy Pacific recommends that analysis agent candidates should have no financial or organizational connections to individual CBEB members, to CBEE subcontractors or other CBEE consultants, and to any program administrators or implementors; other related measures are also proposed. Energy Pacific is also concerned with the power of analysis agents to drive the energy efficiency planning, funding and evaluation processes.

We agree with the need to avoid the potential for self-dealing or the appearance of impropriety. Ideally, analysis agents should be objective third party entities. CBEB should use a competitive selection process to choose analysis agents. We recognize, however, that the universe of qualified individuals and entities for these functions may be limited. We will require that minimization of conflict-of-interests be a significant criteria in the selection process for analysis agents, and that individual Board Members refrain from any participation in selection processes when analysis agent candidates have financial or organizational ties to that Board Member.

SCE and RESCUE/ICA/SESCO and NAESCO argue that CBEE's scope of services for program administrators include implementation functions that go beyond the role intended by the Commission. We disagree. In D.97-02-014 and D.97-09-117, we delineated the expected functions of energy efficiency program administrators to include assisting the Board in selecting various projects, paying monies to and verifies program milestones/performance indicators, managing any standard offers, and collecting funds and managing the bank account. We explicitly stated that the program administrators would not "deliver energy efficiency solutions."

In providing this description of general functions, we stated that it was not intended to be exhaustive of the activities that may be provided by administrators "but simply that any activities should be consistent with this list."

(<u>lbid.</u>, p. 30 n. 9.) With respect to implementation functions, we clarified our expectation that project development and agreements with customers "should be left to private companies." We also emphasized that "providing customers with meaningful information on energy efficiency investments and reducing barriers to investments in energy efficient technologies" are more properly performed by program implementors. (<u>lbid.</u>, p. 31; see also Conclusions of Law 20 and 21, Ordering Paragraph 17.)

Under CBEE's proposal, program administrators shall never perform the following functions: 1) provide energy efficiency solutions to customers (e.g., customer incentives, design assistance, direct installation), 2) develop project agreements with customers (e.g., standard performance contracting), 3) provide site-specific information to customers or 4) provide general technical training or commissioning. (See CBEE's November 24, 1997 filing, pp. 20-22; CBEE's March 11, 1998 proposed RFP, p. I-23.) These exclusions clearly identify implementors (not program administrators) as the responsible entities for developing projects, reaching agreements with customers and delivering energy efficiency solutions, consistent with our guidance in D.97-09-117.

As discussed in Section 5.1, CBEE identifies program-related functions not falling under the above exclusions that are often categorized under program implementation. (See CBEE's March 11, 1998 proposed RFP, pp. I-18 to

¹³ We note that the text of the RFP is not as descriptive as CBEE's November 24, 1997 filing (pp. 20-23) with regard to the nonadministrative functions for which a program administrator 1) will never have a role under this RFP or other funding vehicle (e.g., the October 1 advice letter process) or 2) may have a role, on a case-by-case basis. CBEB should expand the discussion in the RFP to reflect the description presented in its November 24, 1997 filing.

I-23; I-39 to I-45.) Our discussion in D, 97-02-014 and D.97-09-117 did not explicitly address whether program administrators should be allowed to (for example): (1) collaborate with other regional and national market transformation initiatives; (2) coordinate bulk purchasing arrangements; (3) provide summary information intended to communicate with customers the range of services being provided by implementors (and how to contact these implementors); (4) provide product rating and contractor certification services; or (5) provide support and training to improve compliance with codes and standards.

We agree with CBEE that there are instances where it may be reasonable to allow the direct involvement of program administrators in these nonexcluded implementation functions. As CBEE explains:

"For some functions, such as bulk purchasing arrangements, effective performance requires an entity with substantial market leverage, a central role in the marketplace, and ties to a wide range of market actors. Manufacturers, being nationally based, generally prefer to deal with as few organizations as possible, and for those organizations with which they do deal to be as centrally placed as possible. Under the new administrative structure, administrators appear to meet these criteria. Thus, administrators may in some cases be better placed than implementors to work with manufacturers.

"For some functions, such as product rating and contractor certification, effective performance requires an entity with substantial credibility in the marketplace and a reputation as a disinterested party. Under the proposed affiliate rules, the CBEB envisions requiring administrators to use a common logo reflecting the public nature of their funding. The CBEB hopes that this will result, over time, in implementors aligned with the CBEB programs building up such credibility. However, at least initially, administrators may be the entity that is best placed to coordinate the use of the logo for program implementation functions such as those described above.

"For some functions, such as providing a centralized source of information regarding the range of services being provided by implementors and the way to reach these implementors, effective performance requires an entity with full awareness of the range of activities being conducted by implementors. Because administrators will be responsible for overseeing the program implementation activities of implementors, they may be well placed to play this role.

"Some functions, such as code support and training, may help contribute to meeting the CPUC's policy goals, but are of such a nature that they cannot be expected to be freely provided by private market actors, even in a vibrant and well functioning energy efficiency market. Administrators may be a logical entity to assume responsibility for such functions." (CBEB's November 24, 1997 filing, pp. 21-22.)

However, any such direct involvement in program implementation by administrators should be undertaken, as CBEE recommends, only on a case-by-case basis. Because the role of program administrators in the market may directly impact our policy goals for energy efficiency, these decisions should be subject to Commission approval in the form of a resolution or decision. Approval for the involvement of program administrators in program implementation not falling under the above exclusions may be requested in conjunction with the October 1 Advice Letter submittal of energy efficiency program plans and budgets. Alternatively, this approval may be requested at a later date, as the programs approved by the Commission are being implemented.

CBEE should clarify in the RFP that it will make recommendations regarding the role of program administrators in nonexcluded implementation functions, on a case-by-case basis, subject to Commission approval. Factors to be considered in giving this approval should include: (1) whether a successful case can be made that the administrator is better placed than any private market actor to fill the nonexcluded function and (2) whether a successful case can be made

that the nonexcluded function contributes to meeting policy objectives, but will not be freely provided by private market actors even in a well-functioning energy efficiency market.

In their comments on CBEE's November 24, 1997 filing, PG&E, SMUD and others urge more specificity regarding program design and funding for the specific programs to be implemented. Several parties also expressed objections to the program funding levels that were presented in the RFP. We recognize that the RFP may not contain the level of detail that bidders would prefer. However, too much specificity at this time would limit the effectiveness of further joint planning processes and the impact of public input and ideas from the marketplace, all of which we are trying to encourage. We believe that CBEE's response to bidders' comments, namely to present a list of minimum responsibilities for which administrators are to be responsible and encourage bidders to go beyond that minimum, represent a reasonable balancing of concerns. We emphasize that the funding levels presented in the RFP for various programs are illustrative examples only. Final funding levels will be developed through the joint planning process, to be reviewed and approved by the Commission on an annual basis.

SDG&E objects to the cost cap system because, in its view, such a system imposes excessive risk on administrators. The cost cap approach is a critical component of the RFP. The point of conducting a competitive solicitation for program administrator services is, among other things, to place the risk of cost overruns on market players, e.g., those who choose to bid under the RFP. The alternative, namely to place that risk on ratepayers, is unacceptable.

Finally, we find no merit to REECH's allegations that public input was inadequate to consider CBEE's recommendations. As described in Section 2,

extensive formal and informal efforts and opportunities for public input have been provided in this proceeding.

In sum, we find that CBEE's proposed RFP and selection process are consistent with our goals and objectives for the independent administration of energy efficiency programs. We have, however, identified some areas that require further clarification or revisions, as discussed above. In addition, we note that there are references in the RFP to the "goals and objectives of the CBEE." (See, for example, page II-11 of CBEE's March 11, 1998 proposed RFP, Section (iii)(1).) In its compliance filing, CBEE should consistently refer to the Commission's goals and objectives (rather than CBEE's) so there is no misunderstanding that it is our goals being promoted by the competitive solicitation and subsequent implementation of energy efficiency programs.

Regarding the model contract terms, CBEE requests a determination regarding the contracting party, e.g., what entity (or entities) should sign the contract with new program administrators. CBEE's model contract identifies CBEE as the contracting party in the opening statement and in specific contract provisions, but identifies the CPUC and CBEE as joint signatories to the agreement. CBEE also recommends that we identify the procurement official who will be responsible for issuing the RFP, handling inquiries and questions, ensuring that state procurement principles are followed, ensuring that proposals are held in a secure environment, and transmitting final proposals to the CBEE and its screening committee.

Because of issues regarding the SPB and CBBE's legal structure, we are still in the process of considering these and other elements of the contracting process, such as what entity or entities will hear protests. Today's decision does not reach a resolution of these issues. We will defer our consideration of the model contract language until these issues can be addressed by further

Commission order. Accordingly, the RFP language should be revised at this time to omit specific identification of the contracting party, procurement official or entity that will hear protests. We will also defer determination of the manner in which funds will be disbursed to the new administrators, until the issues identified above are addressed.

As CBEB notes, the term set forth in the RFP and accompanying contract requires the Commission to seek a waiver from the DGS to extend the term beyond 36 months. We find that there is a substantial justification for a longer contract term in this situation, given the current time limitation on the CBEE's efforts to the period through the end of 2001. Without such an extension, a contract entered into in August 1998, for example, could require a new competitive procurement for only the remaining four months of 2001. We direct our Executive Director to seek such a waiver as expeditiously as possible, and report to the assigned Commissioner on the status of that request. We approve CBEE's proposed contract term, contingent upon DGS approval of our request for a waiver.

As CBEE points out, the model contract will be amended several times during the term to reflect the development of program designs as a result of the joint planning process. CBEE requests that we decide how such amendments should be made, and by whom. CBEE also requests that we decide the procedural process for approval of program administrator awards and contracts.

Amendments to the contracts that reflect program design and development should be presented to the Commission as part of the annual Advice Letter process described in Attachment 3, and considered at that time. CBEE's request for approval of the program administrator awards and signed

contracts should also be made by Advice Letter, to be approved by Commission resolution.

Page I-56 of CBEE's proposed RFP currently states that CBEE has the authority to modify the RFP prior to the date fixed for submission of final proposals. This language should be changed to state that the Commission, or the Commission's designee, shall have this authority.

CBEE's proposed RFP includes a timeline for the transition to the new administrative structure, which includes milestones adopted by the assigned ALJ in compliance with the transition dates adopted in D.97-09-117. The timeline includes key dates for: 1) the release of the RFP, 2) the preparation and submission of proposals, 3) the review of proposals and CBEE selection, 4) the Commission review and approval of award contracts, and 5) the full operation of new administrators.

We have been unable to move forward on schedule in light of certain events, in particular, the recent ruling by the SPB Executive Director which disapproved the agreements between CBEE and its administrative and technical consultants. As discussed in the Introduction and Summary, we are reviewing the extent to which the administrative structure adopted in D.97-02-014 and subsequent decisions can be continued in light of that ruling. As part of that review process, we may need to make modifications to the transition dates adopted in D.97-09-117, and hence, the key dates included in the RFP. Therefore, in its compliance filing, CBEE should leave the key dates blank until further direction from the assigned ALJ, assigned Commissioner or the Commission.

On March 10, 1998, the Governor issued an executive order for all state agencies to cease enforcement of the minority and women business enterprise program participation goals previously required under Public Contracts Code 10115. The RFP language in Section III should be revised to

delete reference to minority and women business enterprises, leaving reference only to disabled veterans. The corresponding form in Appendix A of the RFP should be modified or replaced accordingly.

State procurement rules may require that the identity of entities submitting letters of intent or bids must be considered public information. Therefore, CBEE's proposal to keep the letters of intent confidential may not be consistent with these rules and this confidentiality language should be deleted from the RFP. We will revisit this question in a future decision on whether to release the RFP.

Finally, we recommend the following editorial changes to CBEE's proposed RFP:

- Clarify that final proposals are public upon completion of the technical evaluation, rather than upon opening. (Section I-G.1, page I-55);
- Clarify that the master copy of proposals will be retained for official files and will become public record after the date and time for technical evaluation of proposals and notice of intent to award, rather that after the date and time for final proposal submission. (Section I.G.5, page 1-56.);
- Correct the phone number for the Office of the Secretary of State. (page III-8.);
- Move the definitions presented in Section I-H into a separate appendix; and
- Include an additional notice to emphasize that a separate proposal must be filed for each separate administrator.

Within 20 days of the effective date of this order, CBEE should file a complete RFP package, including the policy rules, as modified by this decision. This compliance filing should contain markings that indicate all changes to the

documents presented in CBEE's March 11, 1998 filing. CBEB should prepare a table of cross-references between the modifications or clarifications required by today's decision and the location of specific language complying with those requirements in the compliance documents. CBEE should also include an unmarked version of the documents in its filing. The Commission will inform CBEE of the results of its review by a letter from the Executive Director, by Commission decision or by Commission resolution, as deemed appropriate by the assigned Commissioner.

Findings of Fact

- 1. The Commission's statements in D.97-02-014 do not exhaustively describe the activities or considerations for energy efficiency funding. Nor do they imply that the additional Commission guidance in the Preferred Policy Decision should be ignored.
- 2. CBEB's proposed rules, as modified by this decision, appropriately consider the various aspects of market transformation and privatization discussed in the Commission's policy decision.
- 3. CBEE's proposed cost-effectiveness rules ensure a broad portfolio of market transformation and privatization activities that meet the Commission's objectives, and are consistent with the direction from the Legislature that PGC-funded energy efficiency activities produce benefits in excess of costs.
- 4. CBEE's proposed rules ensure accountability by requiring independent analysis of the PGC-funded programs as they are implemented.
- 5. The public workshop process proposed by CBEE for working out important implementation issues is consistent with the approach this Commission has taken in the past to implement utility-funded DSM activities.
- 6. CBEE's recommendations to have separate administrators for residential, nonresidential and new construction activities best balances the following

objectives: 1) presenting each administrator with a scope of responsibilities that is limited enough to be within the capabilities of a wide range of entities, thus allowing for a substantial market response to this RFP, 2) limiting the risks attendant on the possibility that one or more administrators might fail to perform adequately, 3) keeping the total number of administrators small enough to lead to a manageable administrative assignment on the part of the CBEE, 4) ensuring that the responsibilities of each administrator are sufficiently clearly delineated to guard against the possibility of program gaps, overlaps and jurisdictional ambiguities; 5) giving the CBEE as many options as possible in tailoring the selection of administrators to the mix of skills across proposers and 6) ensuring that administrators' responsibilities are structured in a manner that reasonably approximates the manner in which actual energy efficiency markets are structured.

- 7. To ban state agencies from bidding for program administrator would inappropriately eliminate potentially qualified administrators from consideration. At the same time, it would be unfair to other bidders to treat state agencies differently for the purpose of the selection process and criteria or limitations on an administrator also performing implementation.
- 8. Including performance incentives in the total award and bidder total cost cap ensures that the total costs of administrator compensation will be limited to the costs proposed by bidders in response to the RFP.
- 9. Including renewable self-generation in the definition of energy efficiency represents a significant change to our current definition and could exclude other valuable on-site measures from consideration. In addition, this modification to the definition of energy efficiency could create possible overlaps or confusion, since renewable self-generation technologies are already eligible for surcharge funding through the Renewables program administered by the CEC.

- 10. Allowing regulated utilities to use ratepayer funds for preparation of bids would give them an unfair advantage over other competitors.
- 11. CBEE's proposed administrator code of conduct, as modified by this decision, restrict an administrator from conducting its activities in a manner that would unfairly favor or discriminate against any market entity.
- 12. The context for the affiliate rules addressed in this proceeding is different from that governing the Commission's consideration of utility affiliate transaction rules in R.97-04-011/I.97-04-012. First, today's adopted rules apply to both utility and nonutility entities. Second, they address circumstances under which affiliates may receive PGC funding for energy efficiency activities, rather than whether affiliates may operate in the market. Finally they apply to program administrators that are acting under contract to perform specific functions to achieve the Commission's market transformation goals, rather than firms providing products and services directly to customers.
- 13. Limitations on the potential receipt of PGC funds do not prevent affiliates of an administrator from operating in energy efficiency markets.
- 14. Limiting the receipt of PGC funds to nonaffiliates of a program administrator, with the exception of SPC programs up to a 15% market share, appropriately balances two objectives: 1) maximizing the number of potential proposers to be administrators or implementors and 2) ensuring that vibrant competitive energy efficiency markets develop during the transition from utility-administered programs to independent administration.
- 15. Remaining concerns over the issue of utility and utility affiliate market power can be addressed by monitoring utility (and affiliate) market share over time and revisiting today's adopted rules, as necessary.
- 16. Concerns over potential favoritism by one administrator vis-a-vis the affiliate of another can be addressed through CBEE's proposed code of conduct,

as modified by this decision. Imposing stricter affiliate limitations at this time would unduly compromise the goal of maximizing the number of potential proposers to be administrators or implementors.

- 17. The context for considering corporate identification of energy efficiency administrators and their affiliates concerns the identification of market transformation programs funded by ratepayers.
- 18. Allowing a program administrator to use its private corporate identification in performing PGC-funded administrative services today could create a competitive advantage for that firm, or its affiliates, as the energy efficiency market becomes privatized.
- 19. Identifying the firms selected as program administrators under a generic statewide identification when acting as the administrator, rather than under private corporate identification, removes the potential that these firms (or affiliates) would obtain an unfair competitive advantage based on their role as (or affiliation with) program administrators.
- 20. There may be some circumstances where "co-branding" would be appropriate to further the Commission's market transformation objectives.
- 21. The achievement of the Commission's energy efficiency goals requires a nondiscriminatory process that allows access to certain customer information without prior contact with a customer, but with adequate customer privacy protections. CBEE's proposed policy rules achieve this objective and are consistent with our directives in D.97-12-103.
- 22. Our utility affiliate rules, as adopted in D.97-12-088 contain adequate safeguards to ensure against the potential transfer of sensitive information to affiliates, without completely prohibiting transfers of employees to affiliates.

- 23. The approach taken in D.97-12-088 to address joint purchases between utilities and affiliates adequately protects against cross subsidization without requiring case-by-case approval of those transactions.
- 24. Consistency with the utility affiliate rules on the issue of joint marketing is inappropriate in the context of energy efficiency programs, where there may be valid reasons why an administrator and implementors (including affiliates of an administrator) may wish to pursue joint marketing.
- 25. CBEE's proposed policy rules do not clearly delineate the respective roles of CBEE and this Commission in implementing and enforcing these rules.
- 26. CBEB's proposed joint planning process facilitates the evolution of program designs and budgets in light of market developments and with input from a wide range of market participants.
- 27. CBEE's proposed RFP package has incorporated suggestions by commentors that are most workable and consistent with Commission policies.
- 28. It would be contrary to Commission policy to include the selection and supervision of analysis agents in the administrator's scope of services. It is necessary to take steps to see that analysis agents are objective, third-party entities to the extent possible.
- 29. CBEE's delineation of excluded implementation functions for program administrators is generally consistent with Commission guidance, but requires some clarification.
- 30. On a case-by-case basis, a program administrator may be the most appropriate entity in the market to be involved in certain nonexcluded implementation functions, such as bulk purchasing, product rating and contractor certification, code support and training and providing a centralized source of information regarding implementors' services.

- 31. Too much specificity in the RFP regarding the administrator's scope of services would limit the effectiveness of further joint planning processes and the impact of public input and ideas from the marketplace. CBEE's presentation of a list of minimum responsibilities strikes an appropriate balance.
- 32. The funding levels contained in the RFP for various programs are illustrative only. Final funding levels will be developed through the joint planning process to be reviewed and approved by the Commission annually.
- 33. CBEE's proposed cost caps appropriately place the risk of cost overruns on market players rather than ratepayers.
- 34. Extensive formal and informal efforts and opportunities for public input have been provided to address the issues in this proceeding.
- 35. CBEB's proposed RFP and selection process, as modified herein, are consistent with Commission goals and objectives for the independent administration of energy efficiency programs.
- 36. Given the issues regarding the SPB and legal structure of CBEB, several contracting issues still need to be resolved, such as what entity or entities will serve as the contracting party, serve as the procurement official and hear protests. The method of fund disbursement to administrators also still needs to be resolved.
- 37. CBEE's proposed contract term requires the Commission to seek a waiver from DGS to extend the term beyond 36 months.
- 38. A term longer than 36 months for the program administrator contracts may be required to avoid unreasonable disruptions in program administration.
- 39. The model contract, if and when adopted by the Commission, will need to be amended during the term to reflect the development of program designs as a result of the joint planning process.

- 40. The key dates and timeline for the RFP may need to be modified in light of recent developments.
- 41. On March 10, 1998, the Governor issued an executive order for all state agencies to cease enforcement of the minority and women business enterprise program participation goals previously required under Public Contracts Code 10115.

Conclusions of Law

- 1. Because the new administrative structure for energy efficiency programs, as envisioned in D.97-02-014 and subsequent decisions, is currently being reviewed by the Commission, CBEB should not implement today's adopted policy rules or release the adopted RFP package until the Commission determines that it is feasible to do so.
- 2. CBEE's proposed policy rules, as modified by this decision and presented in Attachment 2, are reasonable and should be adopted subject to the above condition. The differences between the affiliate rules adopted today and those adopted for utility affiliate transactions in D.97-02-014 are appropriate, given the different context for affiliate transactions in this proceeding.
- 3. As modified by this decision, CBEE's proposed RFP and selection process are reasonable and should be adopted subject to the above condition. However, adoption of the model contract language should be deferred until issues such as the contracting party, procurement official and entity hearing protests are resolved by further Commission order.
- 4. Our approval of CBEE's proposed contract term should be contingent upon our obtaining a waiver from DGS to extend the term beyond 36 months. The Executive Director should seek such a waiver as expeditiously as possible.
- 5. As described in the RFP, CBEE and the new administrators should jointly develop annual program plans and budgets to be submitted to the Commission

as an Advice Letter filing by October 1 of each year. In this submission, CBEE and the new administrators should provide program or project-specific (as appropriate) cost-effectiveness results as well as portfolio total cost-effectiveness, on a prospective basis. The annual program plans may also include CBEE's recommendations regarding market share limitations, as discussed in this decision. Amendments to the program administrator contract, to reflect changes in program design that modify the workplan and other aspects of the program administrators' responsibilities, should be presented in this annual submission for Commission review and approval. Because the new administrators may not be under contract until too late in the process, CBEE should develop the program plans and budgets to be submitted to the Commission for the 1999 program year, as described above.

- 6. The public workshop process proposed by CBEE for working out implementation issues is reasonable and should be adopted. After conducting the workshops, CBEE should filed any proposed revisions to the rules adopted by today's decision as a Petition for Modification under Rule 47, to be served on the Special Public Purpose service list in this proceeding or on the service list of any successor proceeding.
- 7. Renewable self-generation projects should not be included in the definition of energy efficiency in the policy rules or RFP package (including the model contract) at this time. After additional public input and workshops, CBEB may resubmit this recommendation under the procedures discussed above. CBEE should coordinate with CEC on these matters and, in making its recommendations, should specifically address the concerns raised by CEC and NRDC in their December 10, 1997 comments, and any other concerns raised by workshop participants.

- 8. State agencies should be allowed to bid for program administrator, but should not be treated differently from other applicants for purposes of the selection process and criteria or limitations on an administrator also performing implementation. The RFP should be modified to reveal that a state agency may submit proposals and receive an award.
- 9. Regulated utilities should not use ratepayer funds for preparation of bids under the energy efficiency program administrator RFP.
- 10. CBEE's proposed affiliate rules should be modified to be consistent with the safeguards provided under Part V.G.2. of our utility affiliate rules adopted in D.97-12-088.
- 11. The Commission should review the policy rules adopted in today's decision based on updated market information.
- 12. Any revisions to the policy rules adopted today should made by Commission decision.
- 13. Analysis agents should be selected through a competitive bidding process, which uses avoidance of conflicts-of-interest as a significant selection criterion. CBER members who have a financial or organizational connection to analysis agent candidates should not participate in the selection process.
- 14. In its compliance filing, CBEB should expand the discussion in the RFP to reflect the description presented in its November 24, 1997 filing regarding the nonadministrative functions for which a program administrator 1) will never have a role under this RFP or other funding vehicle or 2) may have a role, on a case-by-case basis.
- 15. In its compliance filing, CBEE should consistently refer to the Commission's goals and objectives, rather than CBEE's, so there is no misunderstanding that energy efficiency programs are to be implemented to promote the Commission's policy objectives.

- 16. In its compliance filing, CBEB should leave the key dates in the RFP timeline blank until further direction from the assigned Administrative Law Judge, assigned Commissioner or by the Commission in an order or resolution.
- 17. CBEE should clarify in the RFP that its request for approval of program administrator awards and signed contracts will be by Advice Letter, to be approved by Commission resolution
- 18. Because the role of program administrators in the market may directly impact the Commission's policy goals for energy efficiency, decisions regarding program administrators role in nonexcluded implementation functions should be subject to Commission approval in the form of a resolution or decision. Factors to be considered in giving this approval should include: (1) whether a successful case can be made that the administrator is better placed than any private market actor to fill the nonexcluded function and (2) whether a successful case can be made that the nonexcluded function contributes to meeting policy objectives, but will not be freely provided by private market actors even in a well-functioning energy efficiency market.
- 19. The RFP language in Section III should be revised to delete reference to minority and women business enterprises, leaving reference only to disabled veterans. The corresponding form in Appendix A of the RFP should be modified or replaced accordingly.
- 20. CBEE should modify the RFP to state that the Commission or its designee shall have the authority to modify the RFP prior to the date fixed for submission of final proposals.
- 21. Because state procurement rules may require that the identity of entities submitting letters of intent or bids must be considered public information, CBBE's proposal to keep the letters of intent confidential may not be able to be adopted. The Commission should clarify this point in a future decision.

- 22. In its compliance filing, CBEE should make the editorial changes to the RFP:
 - Clarify that final proposals are public upon completion of the technical evaluation, rather than upon opening. (Section I-G.1, page I-55);
 - Clarify that the master copy of proposals will be retained for official files and will become public record after the date and time for technical evaluation of proposals and notice of intent to award, rather that after the date and time for final proposal submission. (Section I.G.5, page I-56.);
 - Correct the phone number for the Office of the Secretary of State. (page III-8.);
 - Move the definitions presented in Section I-H into a separate appendix; and
 - Include an additional notice to emphasis that a separate proposal must be filed for each separate administrator.
- 22. Unless otherwise stated in this decision or adopted policy rules, CBEB should request Commission approval by filing an Advice Letter and serving that Advice Letter on the Special Public Purpose service list in this proceeding or on the service list of any successor proceeding. Commission approval will take the form of a Commission resolution.
- 23. Because no party has been adversely affected by the late filing of comments by REECH and SMUD, those comments should be accepted.
- 24. In order to expedite the filing of compliant RFP documents, this order should be effective today.

INTERIM ORDER

IT IS ORDERED that:

- 1. The approval given in Ordering Paragraphs 2 and 3 of the policy rules and request for proposal (RFP) proposed by the California Board for Energy Efficiency (CBEE) is conditioned on the Commission's determination that the approach to the administration of energy efficiency programs adopted in Decision (D.) 97-02-014, D.97-04-044, D.97-05-041, and D.97-09-117 is feasible. The adopted policy rules shall not be implemented and the adopted RFP shall not be released until further order of the Commission.
- 2. The policy rules proposed by the CBEE to govern the use of Public Goods Charge (PGC) funds for promoting energy efficiency, as modified by this decision and presented in Attachment 2, are adopted subject to the condition stated in Ordering Paragraph 1. Any modifications to these policy rules shall be made by Commission decision.
- 3. The RFP proposed by CBEE, as modified by this decision, is adopted subject to the condition stated in Ordering Paragraph 1. The model contract proposed by CBEE and included in the RFP is not adopted at this time. It shall be reviewed by the Commission in a subsequent decision, in which the contracting party, procurement official and entity hearing protests will be identified.
- 4. Within 20 days of the effective date of this order, CBEE shall file a complete RFP package, including the policy rules, as modified by this decision. This compliance filing shall contain markings that clearly indicate all changes to the documents presented in CBEE's March 11, 1998 filing. CBEE shall prepare a table of cross-references between the modifications or clarifications required by today's decision and the location of specific language complying with those requirements in the compliance documents. CBEE shall also include an unmarked version of the documents in its filing. These tasks are appropriately

considered wrap-up activities for CBEE's technical consultants, consistent with Assigned Commissioner Neeper's Ruling of February 24, 1998. The Commission shall inform CBEE of the results of its review by a letter from the Executive Director, by Commission decision or by Commission resolution, as deemed appropriate by the assigned Commissioner.

- 5. CBEE and the new administrators of PGC-funded energy efficiency shall jointly develop annual program plans and budgets to be submitted to the Commission as an Advice Letter filing by October 1 of each year. In this submission, CBEE and the new administrators shall provide program or project-specific (as appropriate) cost-effectiveness results as well as portfolio total cost-effectiveness, on a prospective basis. Amendments to the program administrator contract, to reflect changes in program design that modify the workplan and other aspects of the program administrators' responsibilities, shall also be presented in this submission for Commission review and approval. The annual program plans may include CBEE's recommendations regarding market share limitations. The Advice Letter filing shall be served on 1) the Special Public Purpose service list in this proceeding or the service list of any successor proceeding and 2) any other individual or organization that sends a written request to CBEE to be served.
- 6. CBEE shall hold public workshops to address implementation issues for PGC-funded activities, including updates and refinements to: 1) initial definitions in the rules, 2) measures of value and performance, including cost-effectiveness tests, and 3) market assessment, evaluation and performance measurement. After conducting the workshops, CBEE shall file any proposed revisions to the rules adopted by today's decision for Commission consideration as a Petition for Modification under Rule 47 of the Commission's Rules of Practice and Procedure. CBEE's Petition for Modification shall be filed at the

Commission's Docket Office and served on the Special Public Purpose service list in this proceeding or the service list of any successor proceeding. Any revisions to the policy rules adopted today shall be made by Commission decision.

- 7. Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall not use ratepayer funds for the preparation of bids in response to the program administrator RFP adopted in this decision.
- 8. Within 120 days from the effective date of this decision CBEE should submit recommendations concerning the type of market information to be submitted by utilities and the administrators (utility and nonutility), and propose a procedural schedule for the submission of this information to CBEE and the Commission. Such information should include market share statistics of utilities, utility affiliates and other entities in the energy efficiency market, the number and dollar value of contracts between utility and nonutility administrators and 1) their affiliates, including affiliates operating in program areas administered by nonaffiliated administrators, and 2) other entities. CBEE shall solicit public comment on its proposal prior to submitting final recommendations. CBEE shall file its recommendations at the Commission's Docket Office and serve copies to the Special Public Purpose service list in this proceeding or on the service list of any successor proceeding. Interested parties shall have 15 days to comment. The assigned Administrative Law Judge, in consultation with the Assigned Commissioner, shall issue a ruling to establish the reporting requirements and filing schedule.
- 9. In consideration of staffing uncertainties, the timing of requirements for CBEE compliance in Ordering Paragraphs 4, 5, 6 and 8 may be modified by Assigned Commissioner Ruling.

- 10. As expeditiously as possible, the Commission's Executive Director shall seek a waiver from the Department of General Services to extend the model contract term beyond 36 months.
- 11. Unless otherwise stated in this decision or the adopted policy rules, CBEE shall request Commission approval by filing an Advice Letter and serving that Advice Letter on the Special Public Purpose service list in this proceeding or on the service list of any successor proceeding. Commission approval shall take the form of a Commission resolution.
- 12. The late-filed comments of Residential Energy Efficiency Clearing House, Inc. and Sacramento Municipal Utility District in response to CBEE's November 24, 1997 filing are accepted.

This order is effective today.

Dated April 23, 1998, at Sacramento, California.

President
P. GREGORY CONLON
JESSIB J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

ATTACHMENT 1

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Last updated on 12-MAR-1998 by: CPL R9404031 PUBLIC PURPOSE 19404032

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ADOPTED PROPOSED MODIFIED POLICY RULES FOR ENERGY EFFICIENCY ACTIVITIES'

A. Overview

The policy rules contained in this document are the California Public Utilities Commission's (Commission) guiding principles to the California Board for Energy Efficiency (CBEE) for use in pursuing the Commission's energy-efficiency policy objectives.

The policy rules are organized into nine sections:

- I. Introduction
- II. Policy Objectives
- III. Roles and Responsibilities Under the Administrative Structure
- IV. Program Design Requirements and Eligibility Guidelines
- V. Measures of Value and Performance, Including Cost-Effectiveness
- VI. Market Assessment, Evaluation, and Performance Measurement
- VII. Compensation and Performance Incentives for Program Administrators
- VIII. Administrator Code of Conduct
- IX. Affiliate Rules

Appendix A contains a list of definitions. Appendix B describes the Public Purpose Test, a cost-effectiveness test for use with Public Goods Charge (PGC)² funded energy-efficiency programs.

I. Introduction

I-1. These policy rules govern the use of Public Goods Charge (PGC) funds for promoting energy efficiency. These rules do not apply to the interim

¹ This document indicates all changes to the Modified Policy Rules proposed by the California Board for Energy Efficiency (CBEE) on November 24, 1997, as revised in the January 31, 1998 and March 11, 1998 supplemental filings. Additions are double underlined; deletions are struck out.

² The policy rules use the term "Public Goods Charge" to refer to (1) electric PGC funds for energy efficiency as set forth in AB 1890, (2) Any energy efficiency funds resulting from a gas surcharge mechanism, and (3) gas DSM funds for energy efficiency authorized in the interim until a gas surcharge mechanism is implemented.

administration of PGC-funded programs during the first nine months of 1998. These rules do not apply to pre-1998 program commitments, which are to be funded using pre-1998 carryover funds, or to shareholder incentives associated with these commitments, both of which remain subject to the <u>demand-side management (DSM)</u> policy rules that were in place at the time the commitments were made.

- 1-2. The policy rules are to be used by the Commission, the CBEB, administrators of PGC-funded energy-efficiency programs, and Implementors of PGC-funded energy-efficiency programs. The CBEB is the appropriate initial forum for parties to review and discuss policy rules and program implementation, and proposed changes to policy rules and programs.
- I-3. The policy rules are supplemented by supporting documents that provide additional information on the application of these rules.
- I-4. Supporting documents may be developed through CBEE-sponsored public workshops, on an as-needed basis. In view of the newness of the objectives, approaches, and needs of PGC-funded programs, these workshops should commence as soon as possible while the CBEE is in the process of hiring new administrators.
- I-5. The policy rules are to be reviewed and modified, as necessary, by the CBEB, subject towith ultimate approval from the Commission.

II. Policy Objectives

- II-1. The goal of PGC-funded energy-efficiency programs is to provide in-state benefits through cost-effective energy-efficiency and conservation programs.
- II-2. The objectives for energy-efficiency policies have changed from trying to influence utility decision makers, as monopoly providers of generation services, to trying to transform the market so that individual customers and suppliers in the future, compelitive generation market, will be making informed and cost-beneficial cost-effective energy choices.

- II-3. PGC-funded energy-efficiency programs should play a strategic and, ideally, transitional role in the development of a fully competitive market for energy-efficiency products and services.
- II-4. The mission of PGC-funded programs is to transform markets and ultimately privatize the provision of cost-beneficial effective energy-efficient products and services so that customers seek and obtain these products and services in the private, competitive market. Energy-efficient products and services are currently sought and obtained by customers in the private, competitive market. Yet, a variety of features or conditions of the structure and functioning of the current market, called market barriers, prevent customers from fully seeking and obtaining all cost-beneficial effective energy-efficient products and services. Success in transforming markets means reducing or eliminating market barriers in ways that allow the private competitive market to supply and customers to obtain all cost-beneficial effective products and services in a self-sustaining fashion that is, without a continuing need for PGC-funded programs.
- 11-5. Elements of such a fully transformed, well-functioning, and self-sustaining market include: (1) Workable competition that motivates rival sellers to supply a variety of energy-related products and services, including different levels of energy efficiency, that satisfy diverse customer needs and societal environmental goals at competitive prices; (2) A customer-friendly environment in which customers can readily obtain and process trustworthy information or professional services that allows them to compare the prices and energy-efficiency qualities of different services and products; (3) A positive legal and regulatory structure that (a) minimizes undue barriers to the entry of new service providers or the development of new and more efficient products; (b) provides for the internalization of environmental damages in energy prices; (c) provides for the expeditious redress of legitimate customer complaints related to defective energy-efficiency products and services or fraudulent performance claims; and (4) An positive innovative and learning environment in which rival entrepreneurs compete and profit by innovatively discovering untapped energy-efficiency marketing opportunities; and (5) a learning environment in which customers learn how new energy-efficient investments and practices may better satisfy their needs and circumstances.

- Achieving the objectives of market transformation will require a balanced portfolio of programs that collectively will: (1) Promote a vibrant energy-efficiency products and services industry that can be self-sustaining without a continuing need for PGC-funded programs; (2) Encourage direct interaction and negotiation between private market participants (including energy-efficiency service providers) and customers, building lasting relationships that will extend into the future; (3) Transform the "upstream" market (e.g., manufacturers, distributors, retailers, and builders) so that energy-efficient products and services are made available, promoted, and advertised by private market participants; (4) Be in the broader public interest, with support for activities that would not otherwise be provided by the competitive market (e.g., capturing lost opportunities and avoiding cream-skimming); (5) Empower customers, especially residential and small commercial customers, with meaningful information on the costs and benefits of energy-efficiency measures; (6) Align the benefits of PGC programs with the customers providing PGC funds; (7) Transform markets in an expeditious manner, in view of the limited time horizon over which PGC funding is guaranteed; and (8) Maximize the societal and in-state energy-efficiency-related benefits achievable through PGC funding.
- II-7. PGC-funded programs are no longer warranted when they cannot further transform the market in a cost-effective manner.
- II-8. Common definitions and reporting requirements are necessary to allow the CBEE to: (1) Track progress in meeting the market transformation objectives outlined in this section; and (2) Ensure consistency in treatment of Administrators and Implementors.

Appendix A includes a list of definitions developed by the CBEE. The CBEE will sponsor public workshops to discuss and develop further definitions and reporting requirements.

III. Roles and Responsibilities Under the Administrative Structure

III-1. The entities responsible for overseeing, administering, and implementing the expenditure of PGC funds for energy efficiency include the following: (1) the Commission; (2) the CBEE; (3) entities performing analytic and other support technical services for the CBEE, known as CBEE staff and agents technical support; (4) Program Administrators, including a

Residential Administrator, a Nonresidential Administrator, and a New Construction Administrator; (5) subcontractor hired by the Administrators to perform specific tasks that are the responsibility of the Administrator; and (56) Implementors, or entities delivering energy efficiency services under the direction of Program Administrators.

- III-2. The following rules describe the general role of the CBEB, staff and agents technical support of the CBEB, Program Administrators, Subcontractors and Implementors. It should be noted, however, that the role of each of these parties will vary somewhat both over time, as experience with the new policy rules accumulates, and over different types of programs.
- III-3. The responsibilities of the CBEE shall include the following: (1) Making recommendations to the Commission regarding the expenditure of PGC funds; (2) Overseeing the development of PGC-funded programs and budgets, including overseeing periodic or as-needed joint planning processes facilitated and led by Program Administrators; (3) Overseeing the transition from interim administrators; (4) Overseeing Program Administrators and their oversight of program implementation, the assessment and verification of Administrator performance, and Administrator compensation and performance incentives; (5) Overseeing the preparation and submittal of reports to the Commission, including reports drafted by CBEE staff and agents technical support and submitted by the CBEE, reports prepared and submitted by Program Administrators, and reports prepared and submitted jointly by the CBEE and Program Administrators; and (6) Overseeing analysis tasks performed by CBEE-staff and agents technical support, including strategic planning, market assessment and program evaluation.
- III-4. The responsibilities of CBEB technical supportstaff and agents shall include the following: (1) Assisting the CBEB in the tasks described in III-3; (2) Performing analysis tasks useful to and identified by the CBEB, including strategic planning, market assessment, and evaluation; (3) Providing information, where requested, that Administrators could use to assess and verify implementor performance and help determine implementor compensation; (4) Developing and drafting CBEE recommendations to the Commission on policy and program issues; and (5) Assisting the CBEB in the preparation and submittal of CBEE reports to the Commission, in the oversight of reports prepared and submitted by the Administrators, and in

the oversight and preparation of reports submitted jointly by the CBBE and Program Administrators.

- III-5. The responsibilities of Program Administrators shall include the following: (1) Facilitating program development, planning, and budgeting, including leading program development and joint planning processes, and being responsible for preparing program designs and budgets for CBEB review and recommendation, and CPUC approval; (2) Administering and overseeing program implementation, including management of programs using Administrator staff or subcontractors; development and oversight of quality assurance standards and tracking mechanisms; development and oversight of dispute resolution processes; review and approval of implementor invoices; and assessment and verification of implementor performance; (3) Helping to facilitate the transition from interim administrators, including working jointly with the CBEE and the other Program Administrators to transfer or reassign the administration of programs and assets and liabilities in an efficient and effective manner; (4) Providing reports on the results of these activities to the CBEE and the Commission; and (5) Providing general program administration and coordination services, including monitoring of budgets, management of Administrator staff and subcontractors, invoicing, expenditure approval, financial accounting, maintenance of financial records consistent with accounting standards, and having audits prepared by independent auditors on an annual basis.
- III-6. The responsibilities of Implementors shall include the following:
 (1) Participating in program development and joint planning processes led by Program Administrators; (2) Implementing programs and activities agreed to under contract with either the Program Administrator or the CBEE; (3) Working cooperatively with Program Administrators to resolve any customer complaints; and (4) Providing periodic market data and program reports to Administrators.
- III.7. The responsibility of Administrator subcontractors shall include the following: (1) Performing the assigned tasks in compliance with the contract; (2) Meeting performance expectations of the Administrator; (3) Providing periodic reports to Administrator; and (4) Performing their roles in a nondiscriminatory fashion.

IV. Program Design Requirements and Eligibility Guidelines

- IV-1. PGC-funded activities are expected to be cost effective. A prospective showing of cost effectiveness for the entire portfolio of PGC-funded activities and programs (i.e., individual programs, plus all costs not assignable to individual programs, such as overhead, planning, evaluation, and administrator compensation and performance incentives) is a threshold condition for eligibility for PGC funds.
- IV-2. All-PGC-funded programs are expected to be capable of transforming markets. That is, programs should strive to achieve sustainable changes in the market place that will increase the supply of and/or demand for cost-beneficial energy-efficient products and services.
- IV-3. On-going demonstration of continued expectations for cost effectiveness of the portfolio (on at least an annual basis) is a condition for continued receipt of PGC funds.
- IV-4. For individual programs within an administrator's portfolio, cost effectiveness is important but not the only criteria for eligibility for PGC funds. In addition, other considerations, such as those identified in policy rule II-6, must also be taken into account.
- IV-5. To assist in assessing a program's potential to or actual performance in transforming markets, program descriptions must include the following: (1) Which customer segments (and customer market segments) and what market events are being targeted by the program; (2) What conditions or features of the market (or market barriers) currently prevent customers from fully seeking and obtaining all cost-effective energy-efficiency products and services in the private, competitive market and why; (3) Whether these conditions can be expected to change (and, if so, in what way) in the absence of the proposed program, including an explanation of why or why not; (4) What activities are proposed for the program, and why and to what extent these activities are expected to reduce or eliminate the market barriers described; (5) What intermediate and/or ultimate indicators will be used to determine to what extent (and why) the program has reduced or eliminated market barriers in a sustainable manner; and (6) What indicators will be used to determine when it is appropriate (and why) to modify, change, or terminate the program.

- IV-6. Programs that involve transactions or exchanges with individual customers must be cost-beneficial <u>effective</u> from the participating customer's point of view. This may be demonstrated by showing that these program activities pass the Participant Test (including financial assistance), as defined in the Standard Practice Manual.³
- IV-7. Programs that provide financial assistance in the form of a Standard Performance Contract shall also have the following design features: (1) An identified element of the energy-efficiency service provider industry that will provide the services and the certification requirements of the providers; (2) A posted price or prices, expressed as a dollar amount per unit of energy-efficiency service provided; (3) Limitations on the share of program funds that could be received by an individual customer; (4) Limitations on the share of program funds that could be received by an individual energy-efficiency service provider; (5) Fully developed minimum requirements for customer contract language regarding terms and conditions for performance for the service provider (e.g., measurement and verification procedures, equipment maintenance, and financial transactions between the customer and the service provider); and (6) An identified process for addressing and resolving customer complaints associated with the contract between the customer and the service provider, including an identified role for the Administrator in the dispute resolution process.
- IV-8. Programs shall also be designed to facilitate coordination, as appropriate, with related activities, including: (1) The electricity Customer Education Plan; (2) The Electric Eduction Trust; (3) The CPUC outreach and education efforts; (24) PGC-funded low income activities; (35) PGC-funded renewable energy activities; (46) PGC-funded research, development, and demonstration energy-efficiency activities; (57) Local, state, regional, and federal energy-efficiency programs, such as regional market transformation activities; and (68) Local, state, and federal energy-efficiency laws and standards.

³ CPUC/CEC. Standard Practice Manual for Economic Analysis of Demand-Side Management Programs. December, 1987.

- IV-6. Programs that involve transactions or exchanges with individual customers must be cost-beneficial effective from the participating customer's point of view. This may be demonstrated by showing that these program activities pass the Participant Test (including financial assistance), as defined in the Standard Practice Manual.
- IV-7. Programs that provide financial assistance in the form of a Standard Performance Contract shall also have the following design features: (1) An identified element of the energy-efficiency service provider industry that will provide the services and the certification requirements of the providers; (2) A posted price or prices, expressed as a dollar amount per unit of energy-efficiency service provided; (3) Limitations on the share of program funds that could be received by an individual customer; (4) Limitations on the share of program funds that could be received by an individual energy-efficiency service provider; (5) Fully developed minimum requirements for customer contract language regarding terms and conditions for performance for the service provider (e.g., measurement and verification procedures, equipment maintenance, and financial transactions between the customer and the service provider); and (6) An identified process for addressing and resolving customer complaints associated with the contract between the customer and the service provider, including an identified role for the Administrator in the dispute resolution process.
- IV-8. Programs shall also be designed to facilitate coordination, as appropriate, with related activities, including: (1) The electricity Customer Education Plan; (2) The Electric Eduction Trust; (3) The CPUC outreach and education efforts; (24) PGC-funded low income activities; (35) PGC-funded renewable energy activities; (46) PGC-funded research, development, and demonstration energy-efficiency activities; (57) Local, state, regional, and federal energy-efficiency programs, such as regional market transformation activities; and (68) Local, state, and federal energy-efficiency laws and standards.

³ CPUC/CEC. Standard Practice Manual for Economic Analysis of Demand-Side Management Programs. December, 1987.

V. Measures of Value and Performance, including Cost Effectiveness

- V-1. Measuring the value of PGC-funded programs and the performance of Administrators serves six purposes: (1) To assist in determining whether a program (prospectively or on a continuing basis) is warranted; (2) To assist in determining prospectively what program activities are appropriate; (3) To assist in determining funding allocations for various programs; (4) To assist in modifying programs during operation to increase their effectiveness; (5) To establish one set of basis for determining compensation for Administrators and/or Implementors; and (6) To assist in assessing retroactively to what extent programs have been successful in achieving the Commission's policy objectives.
- V-2. Cost effectiveness, both for entire portfolios of PGC-funded programs and for individual programs, is an important measure of value and performance. In view of the policy objectives for PGC-funded programs, a modified measure of cost effectiveness is used, called the Public Purpose Test (PPT). The PPT is generally based on the Societal Test and is also similar to aspects of the Total Resource Cost Test (TRC), as defined in the Standard Practice Manual. However, the PPT explicitly recognizes the appropriateness of including certain elements that have not traditionally been included in the practice of calculating the TRC. The new elements may include: (1) program spillover savings; (2) non-energy costs and benefits; (3) externalities, including environmental costs and benefits; and (4) reductions in the cost of measures or practices caused by the program.

See Appendix B for a more detailed description of the PPT and a comparison of the PPT to the Societal Test and TRC.

V-3. The PPT may be calculated by treating programs as multi- (rather than single) year activities so that programs explicitly designed as integrated, multi-year strategies, which may have modest benefits (and/or high start-up costs) in early program years, can be evaluated considering the expected larger benefits (and/or lower costs) in later program years.

³ CPUC/CEC. Standard Practice Manual for Economic Analysis of Demand-Side Management Programs. December, 1987.

- V-4. Inclusion of new elements in the PPT may lead to greater imprecision in the calculation of the PPT. However, imprecision in the calculation of the PPT should not prevent its use in determining the cost effectiveness of PGC-funded programs to society (Section III, Program Design Requirements and Eligibility Guidelines) or in helping to establish compensation for Administrators (Section VII, Compensation and Performance Incentives for the Independent Administrators). There are many ways to address the risks associated with imprecise calculation of the PPT. For example, for program planning purposes, risks can be mitigated through the use of scenario analysis, direct comparison of risks to opportunities, inclusion of explicit safety factors (e.g., requiring that the PPT exceed some threshold ratio greater than 1.0), and rigorous testing of the strength of a program's underlying theory of how it seeks to transform a market(s); see V-6.
- V-5. The PPT shall not be relied on exclusively in making funding allocation decisions among programs and/or Administrators, or in determining compensation for the Administrator(s) and Implementors.
- V-6. The ability or actual performance of programs in transforming markets by removing the market barriers customers and other market participants currently face which prevent customers from fully seeking and obtaining all cost-beneficialessective energy-efficiency products and services in a well-functioning, private, self-sustaining, competitive market, is another important measure of the value of programs. The reduction or removal of market barriers is evidenced by market effects, which are the changes in the structure or functioning of markets caused by a program (e.g., level of efficiency realized, changes in availability, stocking, pricing, attitudes, awareness, etc.). Whether a market effect(s) is indicative of market transformation depends upon having a plausible explanation of the link between a program's interventions, all market changes focusing on those caused by the program (i.e., the resulting market effects), and their effects on market barriers (both immediately, as well as on a lasting or self-sustaining basis).
- V-7. Although it may take time to transform markets, there is a need to assess the performance of Administrators and to revise program designs in a timely manner. Therefore, shorter-term indicators of market change (with special emphasis on those caused by the program or market effects)

are also appropriate to use in measuring the effectiveness of programs and performance of Administrators.

- V-8. The CBEB will sponsor public workshops to discuss and refine the Public Purpose Test and other measures of the value and performance of PGC-funded program, as well as discuss how application of measures might differ at different stages in a program's life-cycle. These workshops, in part, will contribute to refinements to the current Standard Practice Manual regarding calculation of measures of cost effectiveness.
- VI. Market Assessment, Evaluation, and Performance Measurement
- VI-1. Market assessment, evaluation, and performance measurement under California's policy objectives for PGC-funded energy-efficiency programs support the following activities: (1) The level of saving realized; (2) Measuring the cost-effectiveness; (13) The planning and design of programs, including providing up-front market assessments and baseline analysis; (24) Providing ongoing feedback, and corrective and constructive guidance regarding the implementation of programs; (35) Measuring indicators of the effectiveness of specific programs, including testing of the assumptions that underlie the explanation of sustainability that support the program; (46) Assessing overall levels of performance and success of programs designed to transform markets; (57) Informing decisions regarding compensation and performance incentives provided to Administrators and/or Implementors; and (68) Helping to assess whether, in specific markets, there is a continuing need for PGC-funded programs. The Commission expects the CBEE to gather information and conduct analysis in order to support these activities, both independently and in conjunction with Administrators of PGC-funded programs.
- VI-2. The primary purpose of market assessment and evaluation is to document changes in the structure and functioning of markets and assess the sustainability of these changes in the market and to evaluate the success of programs. These efforts should focus on measuring the market effects caused by programs and testing the assumptions and explanations that underlie them. These efforts logically begin with assessments of current markets and evaluations of the market barriers that prevent the adoption of all cost-beneficialeffective energy-efficient products and services through the natural operation of the private, competitive market. A critical

area to document is the current scope, level, and comprehensiveness of energy-efficiency activities that are naturally being provided by the private, competitive market. This information must be combined with information on the operation of PGC-funded programs to help determine whether the market changes caused by the programs can be expected to be self-sustaining, if PGC funding is no longer available.

VI-3. In view of possible imprecision associated with measuring market effects and the reduction in market barriers, it is necessary to: (1) Articulate specific theories about what market effects and reductions in market barriers specific interventions are expected to have, and test the assumptions that support these theories; (2) Measure a wide range of market indicators, both before, during, and after interventions, using a variety of methods' -- it is unlikely that there is a single indicator that can be used to determine whether a market has been transformed to the point where intervention is no longer necessary or appropriate; (3) Compare observed changes in market indicators and the sequence of these changes, to what would be expected if the program is working as intended, as well as to estimates of what would have occurred in the absence of the intervention (i.e., identify market effects caused by the program); (4) Link observations of market changes and market effects to reductions in market barriers; (5) Develop a system for ongoing feedback, so that indicators of market changes and market effects, as well as the theories which underlie them, can be assessed, or modified along the way; (6) Use forecasts and scenario analysis to assess likely future outcomes and inform interim decisions because it is not practical to wait for longer term results; (7) Focus efforts on the causal role of the program in increasing market adoption of measures, rather than primarily in addition to on estimating the net savings per measure adopted when quantifying environmental and resource benefits; and (8) Recognize that changes can take place in multiple

For example, methods for evaluating market changes and market effects may include: (1) surveys or interviews of manufacturers, other market actors in the distribution chain, and customers; (2) surveys or compilation of existing data on manufacturer and distributor shipments; (3) surveys or compilation of existing data on retail or wholesale sales; (4) surveys of product/service availability, floor stock, and shelf space; (5) surveys of prices and changes in prices; (6) surveys of changes in advertising practices, marketing materials, and catalog offerings; and (7) and approaches for analyzing many of these data (which may include stated/revealed preference, discrete choice, and conjoint, trend, and scenario analysis).

markets and market segments, and can result from multiple interventions over several years (rather than from one program in a single year): and (9) Recognize that some changes can take place in a market regardless of the intervention.

- VI-4. In view of the lack of formal experience with transforming markets as an objective of energy-efficiency policy and in view of the imprecision associated with all measurements, it is appropriate to hold public workshops in which market assessment, evaluation, and performance measurement can be discussed and appropriate research activities identified and planned.
- VII. Compensation and Performance Incentives for Program Administrators
- VII-1. A two-part compensation structure, which includes both a base-level of compensation and a performance incentive, is appropriate for Administrators of PGC-funded programs. Total compensation for all administrative services, including both base compensation and performance incentive compensation, shall be included under the cap on administrative expenses in the Administrator RFP and Contract.
- VII-2. Effective performance incentives encourage an Administrator to work enthusiastically and aggressively to achieve the Commission's objectives because they are rewarded when they are successful and penalized when they are not. To be effective in encouraging an Administrator to perform as desired, a targeted performance incentive mechanism should be, first and foremost, carefully and thoughtfully aligned with the policy objectives. Once this threshold is satisfied, mechanisms should also strive to be:

 (1) Clear in their intended message; (2) Understandable and accessible; (3) Composed of rewards and/or penalties tied to outcomes the Administrator can affect; (4) Reasonably balanced between risks and rewards for the Administrator and society as a whole; (5) Large enough to attract and retain the attention of the Administrator; (6) Timely; and (7) Relatively easy to monitor with respect to evaluating the performance
- VII-3. Definitions of performance for Administrators should be consistent with the policy objectives. In general, performance or success can be defined,

of the Administrator.

assessed, measured, and rewarded using several different metrics, including: (1) Effective and efficient performance of planned activities (e.g., good-faith implementation of planned tasks); (2) Interim and leading indicators of ultimate effects (e.g., indicators of market effects and/or reductions in market barriers; indicators of lasting effects); and (3) Ultimate effects (e.g., energy and demand savings, product sales as a proxy for energy and demand savings, market penetration, lasting reductions in market barriers, and transformed markets).

- VII-4. The choice of which metric to use as the basis for a performance incentive for an Administrator should depend on: (1) The nature and level of the Administrator's responsibilities; (2) The timing and reliability of the estimates or indicators of effects of the programs; (3) The ability of the Administrator to impact the specific metrics; (4) The degree of risk for both the Administrator and the public; and (5) The role of the Administrator and other participating organizations (e.g., the degree to which success depends on the participation of other organizations).
- VII-5. Special attention is required to ensure that performance incentives are aligned with the objectives of transforming markets and privatization of the market. An effective performance incentive mechanism should:

 (1) Focus the Administrator on achieving lasting market effects and reductions in market barriers; (2) Encourage strategic activities that work within markets, with existing market transactions, and with market participants; (3) Ensure that feedback on the process of the activity, the changes in the market, and the indicators of effects is available and incorporated on a ongoing basis; and (4) Provide information on the costs, benefits, and performance of the activities.
- VII-6. The criteria for good-faith-implementation of planned activities, which should achieve measurable results when possible, can be applied at two levels: (1) To the overall performance of the Administrator (e.g., participation in national and statewide activities, coordination with others on joint actions, sponsoring and supporting market assessment and baseline studies, etc.); and (2) To the performance related to individual programs and activities (e.g., developing specific technology standards, offering planned training sessions, etc.).

- VII-7. The level of incentive needed to be effective depends on the mix and magnitude of opportunities and risks that influence the Administrator. In view of the newness of the objective of transforming markets, penalties that translate into substantial downside risks for the Administrator are not appropriate for providing performance incentives aligned with this objective. Incentive caps for Administrator compensation (such caps linked to a maximum percentage of direct program costs) are appropriate to limit the potential for excessive compensation.
- VII-8. An overall base compensation and performance incentive mechanism for Administrators of PGC-funded programs may be comprised of several components, such as: (1) Base compensation based on competent management and good-faith-implementation of planned tasks; (2) Minimum performance standards, based on readily observable measures (such as the completion of identified tasks), that an Administrator would need to exceed in order to be eligible for any performance incentive and penalties for not exceeding them; (3) Performance incentives for individual programs based on indicators of market effects and reductions in market barriers (especially for indicators of lasting effects); and (4) A bonus incentive for exceptional overall performance (e.g., if the Administrator met or exceeded individual program goals for more than 75% of the programs under its management): and (5) Penalties for failing to implement specific programs or other shortcomings in Administration.

VIII. Administrator Code of Conduct

VIII-1. The following Code of Conduct (Sections VIII – 2 through VIII – 9) applies to Administrators in their interaction with non-affiliated persons, Implementors and other entities. This Code of Conduct is intended to ensure that an Administrator does not unfairly discriminate against any person or entity; does not inappropriately use knowledge, data, information or strategic plans acquired in performing the functions set forth in the Scope of Services in Section I.D. of the RFP to gain an unfair competitive advantage in energy efficiency or other markets, and does not cross-subsidize its non-CBEB related business or activities by the use of PGC funds. Unless the context otherwise requires, the definitions set forth in Appendix A of these Rules govern the construction of those Rules.

- VIII-2. An Administrator shall not use its own name, logo, service mark or "brand", trademark or trade name, or other corporate identification in association with its performance of the functions as a Program Administrator without the prior written recommendation approval of the CBEE or Commission and approval by the Commission. The CBEE shall developdetermine the corporate identification to be used by an Administrator to identify activities to perform the Scope of Services for an Administrator, subject to Commission approval. The CBEEBoard may also recommendment that this corporate identification for an Administrator to be used by Implementors. Corporate identification includes, but is not limited to, name, logo, service mark or "brand", trademark or trade name, or other corporate identification.
- VIII-3. An Administrator shall maintain separate books and records for functions necessary to perform the duties of Program Administrators according to generally accepted accounting principles.
- VIII-4. An Administrator shall not perform <u>non-administrative</u> program implementation functions (e.g. <u>implementation and other</u>) without the prior written-approval of the <u>CBEECommission</u>.
- VIII-5. An Administrator shall not condition or otherwise tie access to PGC-funded programs or services to the taking of any non-PGC funded products, programs or services that it otherwise provides or offers for sale.
- VIII-6. An Administrator shall <u>presentfile</u> a plan <u>to the CBEE</u>, for approval with the <u>and obtain CBEE</u> Commission approval prior to acquirging information from Implementors or market actors that will ensure that non-public and confidential or proprietary information acquired in the performance of its duties as an Administrator will not be inappropriately transferred or conveyed in any manner to employees of the Administrator or others for purposes other than the discharge of the duties set forth in the Scope of Services for an Administrator.
- VIII-7. An Administrator may request information from PGC-funded Implementors and/or other market actors to perform its duties as a Program Administrator. The CBEE may direct Aan Administrator and/or a Utility shall to provide a non-discriminatory process which allows Implementors access to Utility Customer Information without prior

affirmative written consent of a Customer, but with adequate customer privacy protections, as necessary and appropriate. This process shall be presented to CBEE for review, and be subject to Commission approval.

Utility Consumer Information received through this process may be used only for PGC-funded programs and purposes. A violation of the use of Utility Consumer Information for purposes other than PGC-funded programs and purposes may result in penalties, including but not limited to revocation of an Administrator's or Implementor's ability to participate in PGC-funded efforts.

The Administrator has the burden of proof, if challenged, to demonstrate prove to the CBEE why any requested information is necessary and appropriate to the performance of its duties as a Program Administrator. The CBEE shall be the final decisionmaker arbitrator in any dispute.

VIII-8. An Administrator shall not unfairly discriminate in its treatment of any entity, market actor or Implementor through the design, processing, evaluation and selection, administration of bids, requests or negotiation of contacts or in the performance of any of the functions necessary to provide the Scope of Services for an Administrator. An Administrator shall establish internal procedures to accomplish the above objectives prior to receiving information from or contracting with any Implementor or market actor and shall submit such internal procedures for reviewapproval by the CBBE and approval by the Commission.

VIII-9. An Administrator shall not violate federal or state anti-trust laws or engage in fraudulent business practices.

VIII-910. A violation of this Code of Conduct may, at the discretion of the Commission-CBEE, result in any contract or agreement made in violation of the Code being void; the requirement that all funds received under said contract being immediately repaid to CBEE with interest; and the imposition of penalties, including but not limited to, the remedies set forth in the Administrator's contract with the CBEE, which may include revocation of the Administrator's contract-with the CBEE. Violation of this Code may also require the Administrator to reimbursement by the Administrator the CBEE for the costs of the enforcement of this Code.

IX. Affiliate Rules

- IX-1. These Rules shall apply to all transactions between an Administrator (Utility or otherwise) and its Affiliate(s) except those specifically excepted herein, involved in the Commission's efforts to create more vibrant Energy Efficiency markets through the expenditure of Public Goods Charge (PGC) funds. Unless the context otherwise requires, the definitions set forth in Appendix A of these Rules, govern the construction of these Rules.
- IX-2. Civil Relief: These Rules shall not preclude or stay any form of civil relief, or rights or defenses thereto, that may be available under state or federal law.
- IX-3. Except for Standard Performance Contracting Programs, no Affiliate of an Administrator, Utility or otherwise, may under any circumstances bid for or receive contracts associated with program implementation for a Program or undertaking administered by an affiliated Administrator. A violation of this Rule shall result in any contract or agreement for implementation being void; the requirement that all funds received under said contract be immediately repaid to the CBEE with interest; and the imposition of any penalties, including, but not limited to, those remedies set forth in the Administrator's contract with the CBEE, which may include the revocation of the Administrator's contract with the CBEE. Violation of this Rule shall also require the Administrator to reimbursement by the Administrator the CBEE for the costs of the enforcement of this Rule.
- IX-4. An Affiliate of an Administrator may only bid for and receive contracts associated with program implementation for a Program or undertaking administered by an affiliated Administrator if the contract involves a Standard Performance Contracting program. The CBEE shall recommend for Commission approval designate what program constitutes a Standard Performance Contracting Program for purposes of these Rules consistent with the definition in Appendix A of these Rules.
- IX-5. Affiliate Implementor(s) of an Administrator may not receive under any circumstances more than 15% of the PGC funds in aggregate expended for Program implementation for a specific SPC program in which they are participating if the Standard Performance Contracting program is

administered by an affiliated Administrator. Violation of this provision shall require the Affiliate to immediately refund all funds in excess of the limitation, with interest, <u>plus 10%</u> and may result in disqualification of the Affiliate from further participation in the program. In addition, the affiliated Administrator may be subject to penalty for failure to comply with this requirement.

- IX-6. If an Affiliate of an Administrator is eligible to be selected for Standard Performance Contracting program implementation, the contract for the Administrator shall include, but is not limited to, the following provisions and requirements set forth in this section (Section IX-6, numbers (1) through (24)).
 - (1) The Administrator shall not unfairly discriminate in its treatment of its Affiliate(s) and non-affiliated entities through the design, processing, evaluation and selection, or administration of bids, requests, or negotiation of contracts.
 - (2) Unless otherwise authorized by the CBEE or the Commission, or permitted by these Rules, an Administrator shall not provide its Affiliate, or Customers of its Affiliate, any preference (included, but not limited to, terms and conditions, pricing, or timing) over non-affiliated entities or their customers in the provision of Energy Efficiency services funded in whole or in part from PGC funds.
 - (3) Unless otherwise authorized by the CBEE or the Commission, an Administrator shall not represent that its Affiliate Implementor(s) or Customers of its Affiliate(s) will receive any different treatment than other, non-affiliated Implementors as a result of affiliation with the Administrator with regard to the provision of Energy Efficiency services funded in whole or in part from PGC funds.
 - (4) The Administrator shall not provide preference to its Affiliates or discriminate against non-affiliates in any way in its administration of its responsibilities and shall provide information concerning programs to Affiliates and non-affiliates on the same basis in terms of access, content, and timing.

- (5) Except as otherwise provided by these Rules, an Administrator shall not (1) provide leads to its Affiliates; (2) solicit business on behalf of its Affiliates; (3) acquire information on behalf of or to provide to its Affiliates; (4) request authorization from Customers to pass on Customer Information to its Affiliates; (5) give any appearance that the Administrator speaks on behalf of its Affiliates or that the Customer will receive preferential treatment as a consequence of conducting business with the Affiliate; or (6) give any appearance that an Affiliate speaks on behalf of the Administrator.
- (6) An Administrator shall not condition or otherwise tie the provision of any of its products or services, including, but not limited, to the provision of Utility Services, nor the availability of discounts, rebates or waivers of terms and conditions of service to the taking of any goods or services from its Affiliate(s).
- (7) There shall be no shared employees/expenses or assets between an Affiliate Implementor and an Administrator except as permitted in Section (IX-6 (11)) below for corporate support.
- (8) An Administrator and its Affiliate(s) shall be separate corporate entities.
- (9) An Administrator and its Affiliate(s) shall keep separate books and records. The books and records of Affiliates shall be open for examination by the CBEB and the Commission and their staffs.
- (10) An Administrator shall not share office space, office equipment, services and systems with its Affiliates nor shall an Administrator allow its Affiliate(s) to access the computer or information systems used to perform its functions as an Administrator. Physical separation shall be accomplished by having office space in a separate building or, in the alternative, through the use of separate elevator banks and/or security-controlled access. This provision does not preclude an Administrator from sharing certain corporate support services with its Affiliates as approved in Section IX-6 (11).

administered by an affiliated Administrator. Violation of this provision shall require the Affiliate to immediately refund all funds in excess of the limitation, with interest, <u>plus 10%</u> and may result in disqualification of the Affiliate from further participation in the program. In addition, the affiliated Administrator may be subject to penalty for failure to comply with this requirement.

- IX-6. If an Affiliate of an Administrator is eligible to be selected for Standard Performance Contracting program implementation, the contract for the Administrator shall include, but is not limited to, the following provisions and requirements set forth in this section (Section IX-6, numbers (1) through (24)).
 - (1) The Administrator shall not unfairly discriminate in its treatment of its Affiliate(s) and non-affiliated entities through the design, processing, evaluation and selection, or administration of bids, requests, or negotiation of contracts.
 - (2) Unless otherwise authorized by the CBEE or the Commission, or permitted by these Rules, an Administrator shall not provide its Affiliate, or Customers of its Affiliate, any preference (included, but not limited to, terms and conditions, pricing, or timing) over non-affiliated entities or their customers in the provision of Energy Efficiency services funded in whole or in part from PGC funds.
 - (3) Unless otherwise authorized by the CBEE or the Commission, an Administrator shall not represent that its Affiliate Implementor(s) or Customers of its Affiliate(s) will receive any different treatment than other, non-affiliated Implementors as a result of affiliation with the Administrator with regard to the provision of Energy Efficiency services funded in whole or in part from PGC funds.
 - (4) The Administrator shall not provide preference to its Affiliates or discriminate against non-affiliates in any way in its administration of its responsibilities and shall provide information concerning programs to Affiliates and non-affiliates on the same basis in terms of access, content, and timing.

- Corporate Support. As a general principle, an Administrator and (11)its Affiliates may use joint corporate oversight, governance, support systems, and personnel. Any shared support shall be priced, reported, and conducted in accordance with the Rules set forth herein. As a general principle, unless otherwise permitted by these Rules, such joint utilization shall not allow or provide a means for the transfer of confidential information, create the opportunity for preferential treatment, lead to Customer confusion, or create significant opportunities for cross-subsidization of Affiliates. Examples of services that may be shared include: payroll, taxes, shareholder services, insurance, financial reporting, corporate accounting, corporate security, human resources (compensation, policies), employee records, corporate legal benefits, employment unrelated to marketing or regulatory issues, and pension management. Examples of services that may not be shared include: state and federal regulatory affairs, state and federal regulatory legal, state and federal lobbying, employee recruiting, engineeringother financial planning and analysis, hedging and financial derivatives and arbitrage services, gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, system operations, and marketing.
- (12) Joint purchases of goods or services are not permitted between an Administrator and its Affiliate(s) without prior written approval of the CBEE or Commission.—To the extent not precluded by any other Rule, an Administrator and its affiliates may make joint purchases of goods and services, but not those associated with the provision of energy efficiency services to customers. An Administrator shall provide a list of joint purchases with its affiliates to the CBEE and the Commission.
- (13) An entity or firm (Utility or otherwise) acting as a Program Administrator shall not use its own name, logo, service mark or "brand", trade name, or other corporate identification in association with its performance of the functions of a Program Administrator without the prior recommendation approval of the CBEB to the Commission and the Commission's approval. The CBEB shall develop determine the corporate identification to be used by a

Program Administrator in the performance of its duties <u>subject to Commission approval</u>. An Affiliate of a Program Administrator may not use this CBEB corporate identification except and to the extent that the CBEB <u>recommends</u>, <u>subject to Commission approval</u>, <u>also that permits other Implementors be permitted</u> to use such corporate identification. Corporate identification includes, but is not limited to, name, logo, service mark or "brand" trademark or trade name, or other corporate identification.

- (14) An Administrator shall not trade upon, promote, or advertise its Affiliate's affiliation with the Administrator's corporate identification <u>developedestablished</u> by the CBEE nor shall an Affiliate trade upon, promote or advertise its affiliation with the Administrator's corporate identification <u>developedestablished</u> by the CBEE, except as authorized by the <u>CommissionCBEE</u>.
- (15) An Administrator, through action or words, shall not represent that its Affiliate Implementor(s) will receive any different treatment than other Implementor(s) as a result of the Affiliate's affiliation with the Administrator. Nor shall an Affiliate, through actions or words, represent to Customers or others that it will receive any different treatment than other Implementors as a result of its affiliation with the Administrator.
- (16) Joint marketing or services between an Administrator and its Affiliate is prohibited unless such joint marketing or services has received the prior recommendation approval of the CBEB, and the approval of the Commission, and is available to non-affiliates on the same terms as the Affiliate(s).
- (17) An employee of an Administrator hired by an Affiliate shall not remove or otherwise provide information, directly or indirectly, to an Affiliate which the Affiliate would otherwise be precluded from having in these Rules.
- (18) An Administrator shall not, directly or indirectly, transfer employees performing functions for the Administrator or make temporary or intermittent assignments, or rotations, to its Affiliate Implementors or to its Affiliates which provide Energy Efficiency services within

California. A record shall be kept tracking the movement of Administrator employees among its Affiliates. An Administrator shall not make temporary or intermittent assignments, or rotations of employees performing PGC-funded or related functions and responsibilities to its affiliates. All employee movement involving an employee performing PGC-funded or related functions and responsibilities between an Administrator and its affiliates shall be consistent with the following provisions:

- a. An Administrator shall track and report to CBEE and the Commission all employee movement between the Administrator and affiliates annually, or at dates to be recommended to the Commission by CBEE.
- b. Once an employee of an Administrator performing PGC-funded or related functions and responsibilities becomes an employee of an affiliate, the employee may not return to the Administrator for a period of one year to perform PGC-funded or related functions and responsibilities of the Administrator. This Rule is inapplicable if the affiliate to which the employee transfers goes out of business during the one-year period. In the event such an employee returns to the Administrator to perform PGC-funded or related functions and responsibilities, such employee cannot be transferred, reassigned, or otherwise employed by an affiliate for a period of two years. Employees transferring from the Administrator to the affiliate are expressly prohibited from using information gained from the performance of PGC-funded or related functions and responsibilities for the Administrator in a discriminatory or exclusive fashion, to the benefit of the affiliate or to the detriment of other unaffiliated energy efficiency service providers.
- (19) An Administrator may provide non-public information and data which has been received from a non-affiliated Implementor to its Affiliate(s) only if the Administrator first obtain written authorization to do o from the non-affiliated Implementor.

(20) An Administrator shall provide non-proprietary information to its Affiliate(s) and non-affiliated entities on a strictly non-discriminatory basis and only if that information is contemporaneously available to non-affiliated entities on the same terms and conditions. The CBEE may direct Aan Administrator shall to provide a non-discriminatory process which allows Implementors (including Affiliates) access to Utility Customer Information without prior affirmative written consent of a Customer, but with adequate customer privacy protections, as necessary and appropriate. This process shall be presented to CBEE for review and recommendations, and be subject to Commission approval.

Utility Consumer Information received through this process may be used only for PGC-funded programs and purposes. A violation of the use of Utility Consumer Information for purposes other than PGC-funded programs and purposes may result in penalties, including but not limited to revocation of an Administrator's or Implementor's ability to participate in PGC-funded efforts.

- (21)If a Customer requests information from an Administrator about an affiliated service provider or Implementor, or the Administrator provides a list of service providers or Implementors to Customers, the Administration shall provide a list of all providers of relevant Energy Efficiency providers. The Administrator, subject to authorization by the CBEE; shall maintain on file with the CBEE and the Commission of a list of service providers which will be disseminated to Customers. Any Implementor or service provider may request that it be included on the list, and, barring Commission CBEE direction, the Administrator shall honor such request. When maintenance of such a list is unduly burdensome due to the number of service providers or Implementers, an Administrator, subject to Commission approval by Advice Letter filing with CBEE approval, shall direct a Customer to a generally available list of service providers (e.g., the Yellow Ppages). The list of service providers should make clear that neither the CBEE nor the Administrator guarantee the financial stability or service quality of the service providers listed by the act of approving this list.
- (22) An Administrator may provide proprietary information to its Affiliate(s) except the Affiliate's use of such proprietary information is

limited to use in conjunction with the permitted corporate services, and is not permitted for any other use.

- (23) An Administrator shall maintain contemporaneous records documenting all transactions with its Affiliate Implementor(s). Such records will be maintained for three years and be made available for third party review upon 72 hours notice, or a time mutually agreeable to the Administrator and third party.
- (24) An Administrator shall, on an annual basis, have audits prepared by independent auditors that verify compliance with the Rules set forth herein. Said audits shall be filed with the <u>Commission with copies to CBEE</u> on dates to be established by the CBEE.
- IX-7. In addition to the requirements and limitation of Sections IX-1 through IX-6, the requirements and limitations set forth in this section [Section IX-7, numbers (1) through (4)] shall apply to a Utility Administrator. Existing Commission rules for each Utility and its Affiliates shall apply except to the extent that they conflict with these Rules. In such cases, these Rules shall supersede other existing rules and guidelines, except as expressly stated by the Commission.
 - (1) A Utility Administrator shall provide access to Utility information and services on the same terms for all Market Participants. If a Utility Administrator provides services or information to its Affiliate(s) acting as Implementors within the area subject to the control or supervision of the Utility Administrator, it shall contemporaneously make the offering and/or information available to all Implementors and other Market Participants.
 - (2) A Utility Administrator shall provide Utility Customer Information to its Affiliate(s) and non-affiliated Implementors on a strictly non-discriminatory basis consistent with Section IX-6 (20), as appropriate.
 - (3) Non-customer specific information, including but not limited to information about a Utility's natural gas or electricity purchases, sales, or operations or about the Utility's gas-related goods or services, electricity related goods and services shall be available to a

Utility Affiliate only if the Utility makes the information contemporaneously available to all other Market Participants and keeps the information open to the public.

- (4) A Utility Administrator and its Affiliate Implementor(s) shall keep separate books and records. The books and records of Affiliates shall be open for examination by the CBEB and the Commission, and their staffs, consistent with the provisions of Public Utilities Code Section 314.
- IX-8. In addition to the requirements and limitations of Sections IX-1 through IX-7, an Affiliate of a Utility that is an Administrator shall provide access to Utility and other information and services provided to the Administrator contemporaneously and on the same terms to other Implementors and Market Participants.

Appendix A. Definitions

Administrator: A person, company, partnership, corporation, association, or other entity selected through a competitive solicitation process by the Commission and any Subcontractor that is retained by an aforesaid entity to oversee and administer Energy Efficiency Programs funded in whole or in part from PGC funds.

Administrative Services: The services to be provided by the Administrator, separate from the limited implementation or other services an Administrator may perform with prior approval of the CBEE.

Affillate: Any person, corporation, utility, partnership, or other entity five percent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by an Administrator or any of its subsidiaries, or by that Administrator's controlling corporation and/or any of its subsidiaries as well as any company in which the Administrator, its controlling corporation, or any of the Administrator's Affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership. For purposes of these Rules, "substantial control" includes, but is not limited to, the possession, directly and indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management of policies of a company. A direct or indirect voting interest of five percent 5% or more by the Administrator, its subsidiaries, or its Affiliates in an entity's company creates a rebuttable presumption of control.

Analysis Agent: An entity or entities selected by the CBEB to perform analytic functions such as strategic planning, market assessment, and evaluation.

California Board for Energy Efficiency (CBEE). The advisory board established by the Commission to advise it on and assist it with the development and implementation of ratepayer-funded Energy Efficiency Programs.

California Public Utilities Commission or the Commission: The state agency charged with regulating California Utilities, and with overseeing ratepayer-funded public purpose Energy Efficiency programs.

Cost-Beneficial: (Definition to be developed during the public workshops. in December 1997 through February 1998.)

Cost-Effectiveness: An indicator of the relative performance or economic attractiveness of any Energy Efficiency investment or practice when compared to the costs of energy produced and delivered in the absence of such an investment. In the Energy Efficiency field, the present value of the estimated benefits produced by an Energy Efficiency Program as compared to the estimated total program's costs, either from the perspective of society as a whole or from the perspective of individual customers, to determine if the proposed investment or measure is desirable from a variety of perspectives, e.g., whether the estimated benefits exceed the estimated costs. See Public Purpose Test and Participant Test.

Cream Skimming: Cream skimming results in the pursuit of only the lowest cost or most cost-effective energy efficiency measures, leaving behind other cost-effective opportunities. Cream skimming is inappropriate when lost opportunities are created in the process.

Customer: Any person or entity that is the ultimate consumer of Utility Services and/or other goods and services including Energy Efficiency products, services, or practices.

Customer Information: Non-public information and data specific to a Utility Customer which the utility acquired or developed in the course of its provision of Utility Services.

Demand Side or Demand Side Management (DSM): Programs that reduce the use of energy by the use of Energy Efficiency products, services, and practices, or that change the timing of energy use.

Energy Efficiency⁵: The use of energy efficiency products, services, and practices or an energy-using appliance or piece of equipment, including demand-side applications of technologies that use a renewable energy source, to reduce

As noted in its December 19, 1997 filing, the CBFE plans to work out the definition of energy efficiency in terms of establishing program design and implementation details for Program Year (PY) 1499 and later years during calendar year 1998. As part of this, the CBFE will explore coordination of renewable self-generation projects with the CEC, potentially including coordinated or joint programs: Until this exploration is complete, the CBFE will not fund renewable self-generation installation; or programs; and therefore does not expect to fund any of these projects in 1998.

energy usage while maintaining a comparable level of service when installed or applied on the Customer side of the meter. <u>Until further notice of the Commission, energy efficiency shall not include the use of demand-side applications of technologies that use a renewable energy source.</u> "Demand-side application of technologies that use a renewable energy source" means a technology that is installed on a customer premise and reduces the use of electricity or natural gas by the on-site production of thermal energy or electricity for use at that site using the energy available from a renewable resource:

Energy Efficiency Measure: Any product, service, or practice or an energy-using appliance or piece of equipment, including demand-side applications of technologies that use a renewable energy source, that will result in reduced energy usage at a comparable level of service when installed on the Customer side of the meter. Until further notice of the Commission, energy efficiency shall not include the use of demand-side applications of technologies that use a renewable energy source. "Demand-side application of technologies that use a renewable energy source" means a technology that is installed on a customer premise and reduces the use of electricity or natural gas by the on-site production of thermal energy or electricity for use at that site using the energy available from a renewable resource:

Energy Efficiency Program: An activity, strategy, or course of action undertaken by a Program Administrator using PGC funds.

Evaluation: The performance of studies and activities aimed at determining the effects of a program, including program-induced changes in energy efficiency markets, energy savings, and program cost-effectiveness.

Implementor: An entity or person selected and contracted with or qualified by a Program Administrator to receive PGC funds for providing products and services to Customers or for providing services for integrated and upstream market transformation efforts.

Integrated Market Transformation: A program designed to integrate the needs of both sellers and buyers of more efficient products and services to ensure that the desired market effects from the program are sustainable even if the primary

focus of intervention is to work with the manufacturers, distributors, or sellers of a product. Also see Upstream Market Transformation.

Interim Administrators: The investor-owned Utilities charged with continuing to administer Energy Efficiency programs on an interim basis through September 30, 1998.

Lost Opportunities: Energy efficiency measures that offer long-lived, cost-effective savings that are fleeting in nature. A lost opportunity occurs when a customer does not install an energy efficiency measure that is cost-effective at the time, but whose installation is unlikely to be cost-effective (or is less cost-effective) later.

Market Actors: Individuals and organizations in the production, distribution, and/or delivery chain of Energy Efficiency products, services and practices. This may include, but is not limited to, manufacturers, distributors, wholesalers, retailers, vendors, dealers, contractors, developers, builders, financial institutions, and real estate brokers and agents.

Market Assessment: An analysis function which provides an assessment of how and how well a specific market or market segment is functioning with respect to the definition of well-functioning markets or with respect to other specific policy objectives. Generally includes a characterization or description of the specific market or market segments, including a description of the types and number of buyers and sellers in the market, the type and number of transactions that occur on an annual basis, and the extent to which Energy Efficiency is considered an important part of these transactions by market participants. This analysis may also include an assessment of whether or not a market has been sufficiently transformed to justify a reduction or elimination of specific program interventions. Market assessment can be blended with strategic planning analysis to produce recommended program designs or budgets. One particular kind of market assessment effort is a baseline study, or the characterization of a market before the commencement of a specific intervention in the market, for the purpose of guiding the intervention and/or assessing its effectiveness later.

Market Barrier: Any characteristic of the market for an energy-related product, service, or practice that helps to explain the gap between the actual level of investment in, or practice of, Energy Efficiency and an increased level that would appear to be cost-beneficial.

Market Effect: A change in the structure or functioning of a market or the behavior of participants in a market that is reflective of an increase in the adoption of Energy-Efficient products, services, or practices and is causally related to Market Interventions.

Market Event: The broader circumstances under which a Customer considers adopting an Energy Efficiency product, service, or practice. Types of market events include, but are not necessarily limited to, the following: (i) new construction, or the construction of a new building or facility; (ii) renovation, or the updating of an existing building or facility; (iii) remodeling, or a change in an existing building; (iv) replacement, or the replacement of equipment, either as a result of an emergency such as equipment failure, or as part of a broader planned event; and, (v) retrofit, or the early replacement of equipment or refitting of a building or facility while equipment is still functioning, often as a result of an intervention into Energy Efficiency markets.

Market Intervention: A deliberate effort by government or its agents to reduce market barriers and thereby increase the level of investment in (or practice of) Energy Efficiency.

Market Participants: The individuals and organizations participating in transactions with one another within an Energy Efficiency market or markets, including Customers and Market Actors.

Market Segmentation: The division of the Customers, Market Actors, products, services, or types of transactions that a marketing agent seeks to influence into discrete elements that facilitate marketing efforts and relate closely to the boundaries of actual markets.

Market Transformation: Long-lasting, sustainable changes in the structure or functioning of a market achieved by reducing barriers to the adoption of energy efficiency measures to the point where further publicly-funded intervention is no longer appropriate in that specific market. Using the terms in this section, Market Transformation is a reduction in Market Barriers resulting from a Market Intervention, as evidenced by a set of Market Effects, that lasts long after the intervention has been withdrawn, reduced, or changed.

New Construction: Residential and nonresidential buildings that have been newly built or have added major additions subject to Title 24, the California building standards code.

Nonresidential: Facilities used for business, commercial, agricultural, institutional, and industrial purposes.

Performance Measurement: The determination of the extent to which a person, organization, or program is successfully meeting specified goals and objectives.

Participant Test: As discussed in the Policy Rules, a cost-effectiveness test intended to measure the cost-effectiveness of Energy Efficiency Programs from the perspective of those Customers (individuals or organizations) participating in them.

Parties or Interested Parties: Persons and organizations with an interest in Energy Efficiency that comment on or participate in the CBEE's and Commission efforts to develop and implement ratepayer-funded Energy Efficiency Programs.

Privatization: A process through which PGC-funded Energy Efficiency Programs are used to transform Energy Efficiency markets so that private transactions between private providers and Customers constitute an increasing portion of all energy efficiency transactions without a continuing need for the use of public funds.

Program: An activity, strategy, or course of action undertaken by a Program Administrator using PGC funds.

Program Administrator: An entity selected through a competitive solicitation process to administer Energy Efficiency Programs funded in whole or in part from PGC funds. See Administrator.

Program Design: The method or approach for making, doing, or accomplishing an objective by means of a Program.

Program Development: The process by which ideas for new or revised Energy Efficiency Programs are converted into a design to achieve a specific objective.

Program Management: The responsibility and ability to oversee and guide the performance of a Program to achieve its objective.

Project: An activity or course of action undertaken by an Implementor.

Project Development: The process by which an Implementor identifies a strategy or creates a design to provide Energy Efficiency products, services, and practices directly to Customers or to implement Market Transformation efforts.

Public Goods Charge (PGC): Ratepayer funding for energy efficiency activities and programs, including: (1) electric PGC funds for energy efficiency (2) any energy efficiency funds resulting from a gas surcharge mechanism, and (3) gas DSM funds for energy efficiency authorized in the interim until a gas surcharge mechanism is implemented. Per Assembly Bill (AB) 1890, a universal charge applied to each electric utility Customer's bill to support the provision of public goods. Public goods covered by California's PGC include public purpose Energy Efficiency Programs, low-income services, renewables, and energy-related research and development. These policy rules apply only to Energy Efficiency PGC funds.

Public Purpose Test: A cost-effectiveness test intended to measure the overall cost-effectiveness of Energy Efficiency Programs from a societal perspective.

Residential: Existing single family residences, multi-family dwellings (whether master-metered or individually metered), and buildings that are essentially residential but used for commercial purposes, including, but not limited to, time shares, vacation homes, etc.

Standard Performance Contracting (SPC) Program: An Energy Efficiency Program consisting of a set of agreements between an Administrator and a number of Project sponsors (either Implementors or Customers) to deliver energy savings from the installation of Energy Efficiency measures and technologies at a Customer facility or set of facilities for a pre-specified price per unit of energy savings which is to be measured using a pre-specified set of Measurement and Verification (M&V) protocols. A SPC program is an open-ended offer with a pre-specified price and set of terms.

Strategic Planning: An analysis function designed to produce recommendations to the CBEE or its Administrator to help guide its policy objectives, program

priorities, program designs, and/or resource allocations to capitalize on market opportunities and/or increase the effectiveness of current programs.

Subcontractor: A person or entity who has a secondary contract undertaking some or all obligations of another contract executed by another person or entity.

Upstream Market Transformation: A term sometimes used to classify programs that primarily work with Market Actors upstream of end use Customers to increase the adoption rate of energy efficient products, services, or practices. (Also see Integrated Market Transformation)

Utility: Any public utility subject to the jurisdiction of the Commission as an Electrical Corporation or Gas Corporation, as defined by California Public Utilities Code Sections 218 and 222.

Utility Services: Regulated Utility Services including gas and electric energy sales, transportation, generation, distribution or delivery, and other related services, including, but not limited to, administration of Demand Side Services, scheduling, balancing, metering, billing, gas storage, standby service, hookups and changeovers of service to other energy suppliers.

Appendix B. Comparison of the PPT to the TRC and Societal Tests

This appendix compares the Total Resource Cost (TRC) and Societal Tests to the Public Purpose Test (PPT) along three dimensions. First, the elements included in the calculation of the three tests are compared. Second, current practice in calculating the TRC Test is compared to proposed practice in calculating the PPT. Third, the ways in which the TRC and PPT tests are used in the policy rules are compared.

Table B-1. Comparison of Elements Included in the Calculation of the TRC, Societal, and PPT Tests

ild I I I I I I I I I I I I I I I I I I I	I Tr. 1.1	10	In the
		1	Public
		Test'	Purpose
	Cost Test		Test
Net Energy and Demand Savings	Yes	Yes	Yes
Economic Value of Energy and	Yes	Yes	Yes
Demand Savings		I	
Non-Energy Benefits (can also be a	No	Yes	Yes
cost)		i	i
Externalities, including	No	Yes	Yes
Environmental (can also be a cost)			İ
Utility Costs	Yes	Yes	Yes
Incremental Participant Costs	Yes	Yes	Yes
Indirect Costs (can also be a	Yes	Yes	Yes
benefit)		ļ	
	Utility	Societal	Societal
		Discount	Discount
		i	Rate
	Net Energy and Demand Savings Economic Value of Energy and Demand Savings Non-Energy Benefits (can also be a cost) Externalities, including Environmental (can also be a cost) Utility Costs Incremental Participant Costs Indirect Costs (can also be a	Net Energy and Demand Savings Economic Value of Energy and Demand Savings Non-Energy Benefits (can also be a cost) Externalities, including Environmental (can also be a cost) Utility Costs Incremental Participant Costs Indirect Costs (can also be a benefit) Utility Weighted Average Cost of	Total Resource Cost Test*

The comparison presented in Table B-1 indicates that the PPT is based on the Societal Test, which also includes environmental externalities and relies on a societal discount rate. As currently described in the Standard Practice Manual, however, the Societal Test does not clearly allow for the inclusion of all non-

⁶ CPUC/CEC. Standard Practice Manual for Economic Analysis of Demand-Side Management Programs. December, 1987

energy benefits or costs (although it does appear to allow for the inclusion of some non-energy benefits and costs).

More importantly, current practice in calculating the TRC differs from that proposed for the PPT. See Table B-2.

Finally, as described in Section IV, application of the PPT in the modified policy rules also differs from application of the TRC in the existing DSM rules. See Table B-3.

Table B-2. TRC versus PPT - Comparison of Practices in Calculating the Tests

		Total Resource Cost Test	Public Purpose Test
Benefits	Energy and Demand Savings	Though spillover can be included, typically focused only on savings associated with non-free-riding program participants.	In addition to savings from non-free riding participants, attempt to include spillover + report precision. New methods may be needed to determine an appropriate baseline.
	Economic Value of Energy and Demand Savings	Administratively-determined avoided costs	Taken from competitive market or forecasts of competitively determined prices, except when prices are regulated, such as those for T&D. T&D costs based on utility costs displaced by programs.
	Non-Energy Benefits (can also be a cost)	Not included	Attempt to include directly-related non-energy benefits and costs - report precision.
	Externalities, including Environmental (can be both a benefit and a cost)	Not included	Yes.
Costs	Utility Costs	In addition to direct program costs, includes overhead, measurement and evaluation, and shareholder incentives	Utility costs, per se, are no longer relevant; however, principle of including all costs associated with administrator/implementor delivery remains the same.
	Incremental Participant Costs	Included; reductions in costs induced by program only increase net benefits for future year programs - see "unit of analysis"	Included; reductions in the costs measures resulting from a program are counted as a benefit since term of the program may span over multiple program years - see "unit of analysis" and "term of analysis"
	Indirect Costs (can also be a benefit)	Rarely included because difficult to quantify; reductions in O&M sometimes included as an indirect benefit	Attempt to include a wide variety of indirect costs and benefits - report precision.
Unit of ana		Individual program years without exception	Depends on the design of a program, typically a single year, but can include multiple years in the case of an integrated multi-year set of activities.
Term of and	alysis	Lifecycle of measures or activities installed or undertaken in single program year	Initially, lifecycle of measures or activities installed or undertaken in current or set of program years, but also may include measures or activities undertaken outside the term of the program

Table B-3. TRC versus PPT - Application to Policy Rules

Table D.3.	TRC versus PFT - Ap	pplication to Policy Rules	
		Total Resource Cost Test under	Public Purpose Test under Modified
7.417.41.31.	130.55	Existing DSM Rules	Policy Rules
To What Are The Tests Applied on a Prospective Basis?	Measure Program Elements (e.g., under existing DSM tules: a three T-8 lamp fixture with electronic ballast replacing a four T-12 lamp fixture with energy-efficient magnetic ballast)	Required, except for New Construction, Information, and Direct Assistance programs.	Not necessarily, (Other lests may apply to measures, such as participant test)
	End-Use Program Elements (e.g., under existing DSM rules: commercial lighting retrofit program, but not PG&E Retrofit Express Program)	Required, except for New Construction, Information, and Direct Assistance programs. Calculated using the sum of measure program elements	Not necessarily.
	Programs (e.g., under existing DSM rules: Commercial Energy Efficiency Incentives)	Required, except for Information and Direct Assistance programs. Calculated using the sum of end-use program elements, plus non-measure costs	Not necessarily; used in conjunction with other priority-setting criteria for funding allocation purposes.
	Total portfolio of PGC-funded programs	Not required.	Yes, as the sum of programs, plus non- allocatable costs (e.g., overhead)
Relationship Between Ex Ante Versus Ex Post Méasurement of Energy Savings	Measure Program Elements	Ex post measurement of first year savings update future ex ante estimates; Ex post persistence and measure bietime studies update ex ante measure lifetime estimates	Same, but evaluation efforts will generally not be focused only on measuring first year savings and measure lifetimes for Individual measures
	End-Use Program Elements	Ex post calculation of cost effectiveness calculated as the sum of measure elements, but only insofar as necessary to support shareholder earnings claims	Same as above
	Programs	Same as program elements	Yes
	Administrator's portfolio of programs	Not reported	Yes
		Total Resource Cost Test under Existing DSM Rules	Public Purpose Test under Modified Policy Rules
Link Between Cost Effectiveness and Compensation to Administrator	Measure Program Elements	Yes, for measures eligible for shared savings	None
	End-Use Program Elements	Yes, for end-use program elements eligible for shared savings	None
	Programs	Yes, for programs eligible for shared savings	No direct link, but can be Included, yet not as the primary determinant, in establishing compensation
	Administrator's portfolio of programs	No, only for programs eligible for shared savings	No direct link, but can be included, yet not as the primary determinant, in establishing compensation

(END OF ATTACHMENT 2)

ATTACHMENT 3

Page 1 ILLUSTRATIVE EXAMPLE OF PROGRAM DEVELOPMENT AND PLANNING PROCESSES AND TIMELINES FOR PY 2000 AND PY 2001

Month	Existing Programs (Third-Party; CBEE- or Administrator-Defined)	New Third-Party Proposals (Solicitation and Procurement Process)	New CBEE- or Administrator-Defined Programs	
Jan		,		
Feb	Analysis Agents and Administrators complete assessments of prior year programs			
Mar	CBEE identifies priorities and emphasis	ators begin joint planning and program d areas with input from Administrators, In includes public workshop(s) and input fr	nplementors, Analysis Agents, interested	
Apr	Analysis Agents and Administrators conduct preliminary assessments of current year programs		As part of joint planning process. Administrators begin facilitating a planning process for new programs	
May		Administrators develop and issue RFPs for third-party proposals		
Jun		Third-party proposals due		
Jul	Analysis Agents and Administrators conduct interim assessments of current year programs	Administrators review, evaluate, and make initial selection of third-party proposals	Administrators complete the initial development of new program concepts and designs	
	Administrators develop initial recommendations regarding continuation, modification, or discontinuation of current year programs	, 		
Aug	Administrators develop draft program plans and budgets by August 15			
		t on draft program plans and proposed by lic workshop(s) and input from advisory		

ATTACHMENT 3

Page 2

Table I.D-1 continued

Month	Existing Programs (Third-Party; CBEE- or Administrator-Defined)	New Third-Party Proposals (Solicitation and Procurement Process)	New CBEE- or Administrator-Defined Programs
Sep	CBEE approves final recommended plans and budgets by September 15; CBEE develops overall energy efficiency budget		
Oct	Administrators and CBEE jointly file program plans and budgets, and CBEE recommendations, by October 1 (advice letter)		
	Administrators develop and issue RFPs for Implementors and contractors		
Nov	Commission approves the program plans and budgets by November 15 (by decision or resolution)		
Dec	Administrators and Implementors prepare for implementation (including signing contracts, where necessary)		
Jan	Programs implemented		

- 1. Public input, review, and comment shall be included and encouraged in all program development and planning processes.

 Administrators are also required to solicit and coordinate input from Implementors, market participants, and Analysis Agents.
- 2. Information from market assessment and evaluation (market assessment, program evaluation, program tracking and monitoring, and market intelligence, including analyses completed by the Analysis Agents), Implementors, and market participants shall be used to inform the processes and decisions throughout.
- 3. Some Programs may be multi-year programs with estimated budgets across two to four years. However, all programs are required to undergo an annual review, and funds will be authorized on a year-by-year basis through an annual program development and planning process.

TABLE I.D-2

ILLUSTRATIVE EXAMPLE OF PROGRAM DEVELOPMENT AND PLANNING PROCESSES AND TIMELINES FOR THE LATE 1998 PERIOD AND PY 1999

Month (1998)	Feedback on 1998 Programs and Proposed Program Changes for Late 1998 Period	Process and Information to Develop and Plan for 1999 Programs	
Mar	First Interim Administrator Progress Report on 1998 programs		
Apr	·	AC market effects studies complete n from CADMAC market effects studies and other sources	
May	Spring Forum to discuss results of CADN CEC report on market transformation p	n 1997 program accomplishments. MAC market effects studies and other information program methodology and case study complete. rities for late 1998 period and 1999 Programs	
Jun	Second Interim Administrator Progress report on 1998 programs		
		ets comments on its program priorities, asks parties for program at from Implementors and market participants.	
July	Interim Administrators and CBEE conduct joint assessment of current year programs. CBEE develops initial recommendations regarding continuation, modification, or discontinuation of 1998 programs – for late 1998 period and PY 1999 CEC report on changes in rate and bill structure completed.		
Aug	CBEE reviews initial recommendations on late 1998 period and makes final recommendations on 1998 program modifications or deletions.	CBEE outlines 1999 programs based on available reports and information.	
	Contracts with ne	joint baseline studies and evaluations available. w Administrators executed. nvolved with the joint planning process.	

ATTACHMENT 3

Page 4

Table 1.D-2 continued

Month (1998)	Feedback on 1998 Programs and Proposed Program Changes for Late 1998 Period	Process and Information to Develop and Plan for 1999 Programs
Sept	Advice letter on use of PGC funds for remainder of 1998 filed at CPUC New Administrators begin implementing any planned modifications for 1998 programs	New Administrators develop draft program portfolios (programs and budgets) for 1999. Release RFPs for third party proposals
Oct	Commission decision on the advice letter by October 1: Approves late period 1998 program plans	Comments from parties on program portfolios due Third-party proposals due Administrators and CBEE jointly file 1999 program plans and budgets, by October 15 (advice letter);
Nov		New Administrators select winning third-party proposals by November 15
Dec		Commission approves the 1999 program plans and budgets by December 1 (by decision or resolution)
Jan 99		1999 programs implemented.

- 1. Public input, review, and comment shall be included and encouraged in all Program development and planning processes. Administrators are also required to solicit and coordinate input from Implementors, market participants, and Analysis Agents.
- 2. Information from market assessment and evaluation (market assessment, Program evaluation, Program tracking and monitoring, and market intelligence, including analyses completed by the Analysis Agents), Implementors, and market participants shall be used to inform the processes and decisions throughout.
- 3. Some Programs may be multi-year Programs with estimated budgets across two to four years. However, all Programs are required to undergo an annual review, and funds will be authorized on a year-by-year basis through an annual Program development and planning process.

PROGRAM-RELATED FUNCTIONS AND RESPONSIBILITIES

CBEE	Program Administrators		Implementors	
	Administrative Functions	Non-Administrative and Limited Implementation Functions		
Program Approval	Program Area Administration	Non-Administrative and Limited Implementation Functions as	Program Implementation	
Guidance on types of programs that should be	Facilitation of Program Development ¹	Authorized by the CBEE on a Case- by-Case Basis	Project Development	
developed	Planning Processes	Non-Administrative and Limited	Delivery of Energy Services	
Ensure compatibility of	Program Design	Implementation Activities Tracked	Agreements with Customers	
programs and program	Oversight of Program	and Budgeted Separately from	V	
portfolios overseen by	Implementation	Administrative Functions	Input to Program	
different Administrators	Program Management		Development	
	Assist with Transition from Interim		Planning ProcessesThird-Party Proposals	
	Administrators		Time-raity Proposals	
	Reporting			

¹ Program development, planning, and design processes will be facilitated and led by the program Administrator, with input from Implementors, Customers, Market Actors, and other interested parties.

ROLE OF ADMINISTRATORS IN PROGRAM IMPLEMENTATION

Administrator Has No Direct Role In Implementation	Administrator May Have Limited Direct Role In Implementation on Case-by-Case Basis, Subject to Commission Approval
Customer Incentives	Incentives to Upstream Market Actors
Standard Performance Contracting	Information and Support to Upstream Market Actors
Customer Specific Information	Code Support and Training
Design Assistance	Mass Advertising and Public Relations
General Technical Training	·
Commissioning	Bulk Procurement
Direct Installation	Collaborations With Other Regional or National Market Transformation Initiatives
• Energy Centers	Product Rating
	Contractor Certification

(END OF ATTACHMENT 4)

Minimum Scope of Services For Program Administrators and Program-Area Specific Scope of Services/Prescribed Programs

A Proposer must prepare and include with the Draft Proposal and Final Proposal a Proposed Work Plan that specifically details how it will accomplish each task and subtask set forth in the Minimum Scope of Services below including the staffing commitments and classifications necessary to perform such tasks and subtasks. All tasks and subtasks in the Minimum Scope of Services, plus the Prescribed Programs where applicable, must be addressed in the Proposed Work Plan. Proposers must complete a separate Proposal and Proposed Work Plan for each Program Area for which they are proposing to be the Administrator

- 1. <u>Minimum Scope of Services</u>. The Minimum Scope of Services consists of five tasks with subtasks, as follows:
 - (a) Task a: General Program Administration and Coordination

Develop, manage, and monitor Administrator, Program, and Program' Area budgets; manage Administrator staff and Subcontractors; develop and implement invoicing, expenditure approval, and financial accounting systems; review and approve Subcontractor invoices; maintain financial records consistent with accounting standards; have audits prepared by independent auditors on an annual basis; coordinate the exchange of information, the identification and prioritization of information needs, and the timing of work products with technical analysts and other support of the CBEE; and coordinate with Administrators of other Program Areas. This task includes the following subtasks:

a.1 Develop, manage, and monitor the Administrator budget (monthly, quarterly, annual, and estimated multi-year) for general Program administration, Program development, facilitation of transition activities, administration and oversight of Program implementation, and reporting.

- a.2 Develop and manage the overall Program Area budget, which includes the sum of the Administrator and all Program budgets in the Program Area. Monitor monthly, quarterly, annual, and estimated multi-year budgets, and compare actual versus budgeted expenditures. Identify any significant cost over- or under-runs by communicating with the contract manager.
- a.3 Solicit and retain the necessary administrative staff and Subcontractors to accomplish the Scope of Services, and manage these resources to complete each task and subtask effectively. Develop and implement procedures to assign, monitor, and review work, and approve completed work. Ensure that all staff and Subcontractors are compensated on a timely basis.
- a.4 Develop and implement the necessary invoicing, expenditure approval, and financial accounting systems to review, approve, and track invoices and payments to Implementors and Subcontractors.
- a.5 Prepare documentation on Administrator expenditures, and submit to the CBEB for review and payment authorization.
- a.6 Review and approve Subcontractor invoices on a monthly basis.
- a.7 Make payments to Implementors and Subcontractors.

The legal structure of the CBEB and related issues regarding the establishment of a trust to receive and disburse PGC funds have not yet been resolved. Therefore, the Commission and the CBEB have not yet resolved whether payments to Implementors will be made by the Administrators with the payments to Implementors passing through the Administrators, or whether these payments will be made by a separate financial and payment agent upon approval of the invoices by the Administrators.

- a.8 Maintain financial records consistent with accounting standards. Provide financial records and documentation required for independent audits.
- a.9 On an annual basis, have financial audits prepared by independent auditors that verify compliance with the contract, the rules set forth therein, and general accounting standards. The Administrator shall pay for the independent audits using PGC funds in their Administrator budget. The completed audits shall be submitted to the CBEE in May of the succeeding year.
- a.10 Provide information for and cooperate with any management audits arranged and paid for by the CBEB.
- a.11 Coordinate the exchange of information, the identification and prioritization of information needs, and the timing of work products with staff and agents of the CBEB (including Analysis Agents) regarding Strategic Planning, multi-year and annual Program planning, Market Assessment, and Program Evaluation. The Administrator shall also regularly discuss relevant data on Program results, opportunities, and implementation methods with the Administrators of other Program Areas.
- a.12 Coordinate with Administrators of the other two Program Areas regarding measures and technologies, markets and market segments, and services and activities that overlap the markets served by each of the three Program Areas. Where overlaps are identified, facilitate the development and implementation of joint or coordinated Programs where they would help to reduce boundary or overlap concerns.
- (b). Task b: Facilitate Program Development, Planning, and Program and Program Area Budgeting

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ATTACHMENT 5 Page 4

Facilitate and lead Program development and joint planning processes, and be responsible for preparing Program designs and budgets for CBEB review and recommendation, and CPUC approval. This task includes the following subtasks:

- b.1 Facilitate and lead the development of Programs and Program budgets in a joint planning process on a periodic or as-needed basis. Coordinate and facilitate public input, review, and comment processes, including meetings, workshops, and review of draft documents, regarding proposed Programs and budgets for the Program Area. Solicit and coordinate input from Implementors, market participants, Analysis Agents, and interested parties. See the discussion of the Program development and planning processes to be used following Subtask b.5.
- b.2 Collect and compile information, and/or use information provided by others (including the Analysis Agents) to develop, improve, or modify Programs, or to recommend the discontinuation of existing Programs, within the planning processes described in subtasks b.1 and b.4.
- b.3 Design some Programs and oversee the design of other Programs consistent with the Energy Efficiency Policy Rules (Appendix C). (See the discussion of the Program development and planning processes following Subtask b.5)
- b.4 On an annual basis, develop a Program Area plan that includes proposed Programs, annual and multi-year Program plans, Program budgets (annual and estimated multi-year), overall Program Area budgets (Program budgets plus the Administrator budget), Program performance indicators and milestones, and Administrator performance mechanisms and milestones for Program-related Administrator performance to the CBEE for its review and approval. As

part of this annual plan, develop or update the multi-year Program and market plan describing the approach to addressing and overcoming market barriers in the specified markets, and ensure its consistency with the strategic plans of the CBEE. (Note: This subtask is an extension of the program development and joint planning processes referred to in subtask b.1.)

b.5 On an annual basis, prepare and submit the CBEE-approved Program descriptions and Program Area plan and budget, together with recommendations from the CBEB, to the Commission for its review and approval. Submit the annual Program Area plan and budget to the Commission as a joint document sponsored by the CBEE and the Program Administrator.

The planning processes, the length of time and resources devoted to the processes, the nature of facilitation, and the role of the Administrator will vary by type of Program and over time. Below are three different administrative and planning processes, which are all part of the joint planning process, that Administrators are required to employ.

- (i) Existing Programs: review existing and ongoing Programs, assess their interim performance and the status of the market (using information compiled by the Administrator and the Analysis Agents), solicit and coordinate input from Implementors, market participants, and other parties on these Programs, and provide recommendations to the CBEE on whether the Programs should be continued, revised, or discontinued.
- (ii) CBEE-defined or Administrator-defined Programs: develop CBEE- and Administrator-defined Programs and Program designs, solicit and coordinate input from Implementors, market participants, and other parties on

these proposed Programs, and provide recommendations to the CBEE.

(iii) Third-party proposals: solicit and assess third-party proposals, solicit and coordinate input from Implementors, market participants, and other parties on these proposals, and provide recommendations to the CBEE.

Attachment 3 presents an illustrative example of the Program development and joint planning processes and timeline to take place first during 1999, and then again in 2000, which will be used to plan and develop Programs for Program years (PY) 2000 and 2001. It also presents an illustrative example of the Program development and planning process and timeline that is expected to take place during 1998 that will apply to: (1) the late 1998 period administered by the new Program Administrators; and (2) Program year (PY) 1999.

(c) Task c: Administer and Oversee Program Implementation

Administer and oversee Program implementation; manage the Programs and Implementors using Administrator staff or Subcontractors; develop and oversee quality assurance standards and tracking mechanisms; develop and oversee dispute resolution processes; review and approve Implementor invoices; and assess and verify Implementor performance. This task includes the following subtasks:

- c.1 Oversee and manage the Programs and Implementors to ensure that Programs are making progress towards adopted objectives and milestones, and that PGC funds are being spent effectively. Solicit, select, hire, and oversee Implementors to deliver Energy Efficiency Programs, and manage the contracts between Administrators and Implementors.
- c.2 Oversce and assess the performance of Implementors. Develop and oversee compensation

mechanisms and levels for Implementors. Collect and compile information, or use information provided by others, for determining Implementor compensation. Review and approve Implementor invoices.

- c.3 Develop quality assurance standards and tracking mechanisms, ensure that Implementors have developed quality assurance standards and methods consistent with the Administrator's standards, and ensure that the standards are operating effectively in all Programs.
- c.4 Develop and manage dispute resolution processes for disputes between the Administrator and Implementors, and oversee dispute resolution processes for disputes between Implementors and customers.
- c.5 Collect and compile information, and/or use information provided by others (including the Analysis Agents), on the characteristics and current status of markets, changes or expected changes in those markets, and the status and progress of PGC-funded Programs to assist with the oversight of Program implementation and to improve or modify Programs. Include information from market participants and feedback and input from Implementors.
- c.6 Collect and provide information that could be used by the CBEE or its agents to assess Administrator performance related to administration of Program implementation, potentially including information for Administrator performance incentives.
- (d) Task d: Participate In and Help Facilitate the Transition from Interim Administrators

Participate in and help facilitate the transition from the Interim Administrators to the new Program Administrators. Work jointly

with the CBEB and the other Program Administrators to transfer or reassign the administration of Programs and the administration of assets and liabilities in an efficient and effective manner. This task includes the following subtasks:

- d.1 Review the CBEB's assessment of Programs administered by the Interim Administrators in 1998 and related assets and liabilities, and provide recommendations to the CBEB on these issues (e.g., continue to operate, revise, or discontinue the Programs; transfer the administration of the related assets and liabilities to the Administrator or reassign them to another entity).
- d.2 Coordinate and facilitate public input, review, and comment processes regarding transition issues.
- Participate in the process of transferring interim d.3Programs and the administration of related assets and liabilities, including contracts. Administer and oversee interim Programs transferred to the Administrator, or assist the CBEB in contracting with an agent to administer and oversee the Programs. Facilitate the transfer of the administration and management of relevant Program-related assets and liabilities.2 This will include the process of transferring Program data bases. tracking systems. information resources. and contacts from the Interim Administrator.
- d.4 Oversee and manage shutting down discontinued Programs, with the Interim Administrators and/or Implementors performing the actual tasks of shutting down the discontinued Programs.

These may include both real and intangible assets and liabilities, such as existing Energy Centers, contracts with project sponsors in Standard Performance Contracting programs, commitments to customers in new construction programs, and information on customers, programs, and markets.

(e) Task e: Prepare and Submit Reports to the CBEE and Commission

Prepare and submit reports to the CBEE and Commission on: actual expenditures and commitments, with comparisons to monthly and annual budgets; the status of Programs and progress towards achieving milestones and objectives, with information on indicators of Program performance; any proposed or actual changes made to Program scope, Program designs, and/or Program implementation; and information that is used to support or justify Administrator compensation and any Administrator performance incentive. Use this data and information to keep the CBEE and the public informed and to assist the CBEE in its oversight role of Program administration and implementation. This task includes the following subtasks:

- e.1 Prepare and submit quarterly and annual reports to the CBEE, and annual reports to the Commission. Report on: (1) actual expenditures and commitments for the Administrator, the Programs, and the Program Area, with comparisons to quarterly and annual budgets; (2) the status of Programs and progress towards achieving milestones and Commission objectives, with information on indicators of Program performance; (3) any proposed or actual changes made to Program scope, Program designs, and/or Program implementation; and (4) Administrator compensation and performance incentive milestones, including estimated, claimed, and/or approved incentive awards, for both administration- and Program-related performance incentives.
- e.2 Prepare monthly reports on actual expenditures and commitments, with comparisons to monthly and annual budgets, and submit these reports to the CBEB and the contract manager on a monthly basis. Report all expenditures consistent with the reporting requirements being developed by the CBEB.

- e.3 Coordinate and facilitate public input, review, and comment processes on all quarterly and annual reports submitted to the CBEE and/or Commission.
- e.4 Respond to information requests from the CBEE or Commission.

3. Program Area-Specific Scope of Services and Prescribed Programs

This section describes services specific to some of the Program Areas, including Prescribed Programs that are required to be implemented in one or two Program Areas, but not all of the Program Areas. Proposers shall address the applicable Prescribed Programs listed below by Program Area in their Work Plans. Proposers are to describe their approach to both developing and overseeing the implementation of the applicable Prescribed Programs.

Residential Program Administrator: No Prescribed Programs. However, please discuss whether Energy Centers are an appropriate and effective Market Intervention strategy in the Residential Program Area, and if so, why. Proposers are free to propose the use of Energy Centers in this Program Area. If they propose to use Energy Centers, the Proposers shall describe how they will be used, which markets and market barriers they will address, and how the Residential Program Administrator will coordinate with the other two Program Administrators that are required to administer Energy Center Programs.

Nonresidential Program Administrator: Energy Centers. The Nonresidential Program Administrator shall administer an Energy Center Program. The Implementor and operator of the Nonresidential Energy Center Program will be determined during the joint planning process; the Program Administrator may or may not be selected to be the Implementor. Therefore, a proposer should include the cost of administering an Energy Center Program in its cost bid, but it should not include the cost of

implementing an Energy Center Program or operating Energy Center(s). Please describe how Energy Centers will be developed, administered, implemented, and operated, which markets and market barriers they will address, and how the Administrator will coordinate with the other Program Administrators that will administer Energy Center Programs.

New Construction Program Administrator: Energy Centers. The New Construction Program Administrator shall administer an Energy Center Program. The Implementor and operator of the New Construction Energy Center Program will be determined during the joint planning process; the Program Administrator may or may not be selected to be the Implementor. Therefore, a proposer should include the cost of administering an Energy Center Program in its cost bid, but it should not include the cost of implementing an Energy Center Program or operating Energy Center(s). Please describe how Energy Centers will be developed, administered, implemented, and operated, which markets and market barriers they will address, and how the Administrator will coordinate with the other Program Administrators that will administer Energy Center Programs.

New Construction Program Administrator: Building and Appliance Energy Efficiency Standards Support. The New Construction Program Administrator shall administer a Building and Appliance Energy Efficiency Standards Support Program to support California's current and future building and appliance standards (such as Title 24). Approaches such as improving the quality of construction (quality assurance) and increasing compliance with California's building and appliance standards shall be encouraged. Please describe how the Building and Appliance Standards Support Program will be developed, how the Administrator will oversee the implementation of the Program, how the Administrator will coordinate with the California Energy Commission and other parties interested in the development and support of standards, how the Program will coordinate with other Market Intervention approaches being proposed or implemented in California, and which customer sectors, markets, market actors, and market barriers the Program will address.

(END OF ATTACHMENT 5)

ATTACHMENT 6 Page I RFP SCORE SHEET

Required Attributes Evaluation Areas	Maximum Points Available 20	0
	Possible	Possible
1. Capability	Points	Points
A. Management and Organization Structure		
(1). Capability of proposed Management and Organiz tasks and subtasks set forth in the Scope of Servi (2). Flexibility of the proposed Management and Org the ability to hire Subcontractors and to monitor (3). Appropriate variety of skills and experience in pr	ces in Section V. anizational Structure including the quality of their work. oposer's Project Team to	
successfully perform the tasks and subtasks set for	orth in the Scope of Services in	
Section V.	9	24
	D	24 Possible
	Possible	
B. Demonstrated Competence/Experience	Points	Points
(1). Demonstrated experience of Project Team memb	ers with energy efficiency	
policy, program design, implementation, oversignand market assessment.	ht, measurement & evaluation, 8	
(2) Demonstrated ability to provide general project a	administration and coordination	
including negotiating contracts, and to perform c	ontract administration and	
oversight with Subcontractors and firms retained	to provide project	
implementation, including demonstrated experien	nce with the design and	
negotiation of performance-based compensation	mechanisms for such firms. 8	
(3). Demonstrated experience in transforming market experience in markets other than energy efficience	ts. For market transformation cy, please explain relevant] [
similarities to energy efficiency markets.	8	
(4). Demonstrated ability to facilitate and lead project	t development and coordinated]
planning process involving multiple participants	, including a demonstrated	
capacity to develop project designs and budgets,	to develop annual and multi-year	
project plans on a periodic basis, and to coordina	ate efforts with other	
decisionmakers.	•	
(5). Demonstrated ability to administer and oversee t with multiple implementors, to manage the project	ne implementation of projects Acte using Administrator staff of	
Subcontractors, and to assess and verify implement	entor performance necessary for	[
the successful delivery of final products and serv	rices in complex projects. 8	1
(6). Demonstrated ability to handle administration, S	ubcontractor budgets, invoices,	1
accounting, disbursement of funds and cost mon	itoring and maintaining financial	
records consistent with accepted accounting stan	dards. 8	[
(7). Demonstrated ability to collect data and key cust	tomer and market actor opinions]
from the marketplace, including obtaining input	from the public and preparing	1
reports summarizing key findings.	5	ļ
(8). Demonstrated ability in reporting on actual expe	nditures, commitments, and	
reconciliation to budgets; on the status of project milestones; on any proposed changes in project	cone decion or implementation:	
and on information used to support or justify Ad	ministrator or Contractor	
compensation and performance incentive.	4	
Compensation and performance internation		56
	TOTAL	80

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Page 2	
Possible	1
2. Cost Points	Points
A. Proposed Total Average Loaded Rates to perform: 25	;
	1
(1). Task 1 (General Program Administration and Coordination) in Section V -	.
Scope of Services 4	
(2). Task 2 (Facilitate Program Development, Planning and Program and Program Area Budgeting) in Section V - Scope of Services 4	j
(3). Task 3 (Administer and Oversee Program Implementation) in Section V -	
Scope of Services 4	1
(4). Task 4 (Participate in and Facilitate the Transition from the Interim	}
Administrators) in Section V - Scope of Services	}
(5). Task 5 (Prepare and Submit Reports to the CBEB and Commission) in	- '{
Section V - Scope of Services (6). Total Average Labor Rate for All Tasks in Section V – Scope of Services 7	
(o). Total rivingo baser rate for his rasks in occiton 4 – ocope of services	
B. Proposed cap on administrative expenses (ratio of Administrator total	Ì
compensation (base compensation plus performance incentive	
compensation) to total costs of programs overseen by the Administrator	- }
not including the Administrator's compensation) 35	60.
Possible	Possible
3. Understanding and Proposed Approach To Scope of Services Points	Points
A. Demonstrated understanding of the goals and objectives of the Board and	j
the Commission and the role of Administrators in achieving these objectives.	1
objectives.	1 1
B. Overall proposed approach to and Work Plan for performing the Scope of	1 1
Services 25	- } - }
	3 3
C. Proposed approach to defining markets or market segments and a	} }
demonstrated understanding of how specific markets or market segments operate.	1 1
operation.	- {
D. Proposed Performance Incentive Mechanisms for Program Administrators. 12	1 1
	1 1
B. Proposed approach to measuring Administrator, Implementor and Program	1 1
performance. 8	60
TOTAL	200
TO TAIL	