**T2WG – Discussion on Task 2, Preponderance of Evidence Requirements**

This document includes the notes collected before Meeting 3, during Meeting 3, and during Meeting 4.

* Red text indicates notes collected from Staff before Meeting 3
* Green text indicates notes collected during Meeting 3 (5/10)
* Green text indicates notes collected during Meeting 4 (5/24)

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# Recommendation #1 for Tiered POE

**Proposal for Simplified POE Requirements for Smaller Custom Projects**

Submitted by Ecology Action – April 6, 2017

In Resolution E-4818 March 2, 2017 the PUC adopted the concept of a *‘Tiered’ approach in its preponderance of evidence guidance, whereby projects with smaller incentives would be held to a lower rigor standard.”*  The Resolution went on to adopt a new structure that employs three different tiers of evidence to support Accelerate Replacement claims:

* *“Full Rigor” for the largest projects with incentives greater than $100,000,*
* *“Tier 1, Medium Rigor” for projects with incentives between $25,000 and $100,000, and*
* *“Tier 2 Lower Rigor” for projects with incentives less than $25,000.*

Staff provided data that show the majority of custom projects/claims have incentives lower $25,000. The table below (from the 2013-2016 Summary tab) shows that projects with incentives <$25,000 make up:

* 97% of all custom projects
* 43% of total incentives

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **PROJECTS <$25,000** |  |  |  |  |
| **Percentage Projects <$25,000 Incentives** |
|   | 2013 | 2014 | 2015 | 2016 | Total |
| IOU |   |   |   |   |   |
| PGE | 97% | 98% | 98% | 98% | 98% |
| SCE | 95% | 96% | 96% | 96% | 96% |
| SCG | 98% | 99% | 97% | 99% | 99% |
| SDGE | 95% | 96% | 98% | 97% | 97% |
| Total | 97% | 97% | 97% | 98% | 97% |
|  |  |  |  |  |  |
| **Percentage Total Incentive for Projects <$25,000 Incentives** |
|   | 2013 | 2014 | 2015 | 2016 | Total |
| IOU |   |   |   |   |   |
| PGE | 37% | 42% | 49% | 48% | 43% |
| SCE | 39% | 42% | 41% | 43% | 41% |
| SCG | 26% | 40% | 46% | 55% | 43% |
| SDGE | 40% | 44% | 48% | 38% | 43% |
| Total | 37% | 42% | 46% | 46% | 43% |

Date file is available in the Meeting 3 folder on: <http://t2wg.cadmusweb.com/>

Direct link to data file: <http://t2wg.cadmusweb.com/Documents/Meeting%203%20-%20May%2010/DATA_CustomProjects_20170508.xlsx>

Stakeholders noted that we should be looking only at the relevant data, not all custom claims or project data. We need to remove Residential projects and focus in on ER and ROB data only. **Need to isolate relevant data and look at distribution of project data to see whether there is another threshold value more appropriate than 25k [ACTION]**

The T1WG spent considerable time developing a proposal for the requirements of each tier, but consensus was not reached and the PUC has postponed implementation until agreement can be reached on the specific evidence requirements of each Tier. This document describes Ecology Action’s proposal for the general evidence requirements at each step. We see this proposal as the first of two steps. The first is to agree on the principles of the required evidence at each tier. The second is to carefully articulate the specifics – to put the meat on the bones. This second step is critical to ensuring that these new rules are consistently understood and applied.

**Recommendation: Rename the Tiers for Clarity:**

* “Tier 1” (Lower Rigor) for projects with incentives less than $25,000 “LOW”
* “Tier 2” (Medium Rigor) for projects with incentives from $25,000 to $100,000 “MED”
* “Tier 3” (Full Rigor) for projects with incentives greater than $100,000 “HIGH”

**Tier 1 Requirements:** (Projects with Incentives up to $25,000)

1. Photographic evidence of existing equipment. Evidence will show equipment in operation when practical (example: operational photographs of exterior fixtures is often impractical for safety and cost concerns).

Staff concerned that photographs are not sufficient to show operation.

1. **Affidavit signed by customer and implementer** affirming that both the influence and RUL conditions for claiming Accelerated Replacement are satisfied for the project. This affidavit should contain language with sufficient consequences to make all involved parties bear repercussions of falsely claiming Accelerated Replacement. This could include customer and contractor having rebate & performance clawed back, or customer could be ineligible for EE program participation for a period of time, or other consequence.

Staff concerned this affidavit carries no weight; legal follow-up/consequences could never be enforced.

Staff – Since the majority of projects are in this category (e.g., according to data table shown above), Staff feels these Tier 1 Requirements are insufficient. Issues:

* Photographs are not sufficient to show operation.
* Signed affidavit carries no weight.
* T1WG recommendation included a questionnaire, but this proposal does not include questionnaire for this category.

**Tier 2 Requirements:** (Projects with Incentives from $25,000 to $100,000)

1. **Photographic evidence of existing equipment.**  Evidence will show equipment in operation when practical (example: operational photographs of exterior fixtures is often impractical for safety and cost concerns).

Staff concerned that photographs are not sufficient to show operation.

1. **Affidavit signed by customer and contractor or PA** affirming that both the influence and RUL conditions for claiming Accelerated Replacement are satisfied for the project. This affidavit should contain language with sufficient consequences to make all involved parties bear repercussions of falsely claiming Accelerated Replacement. This could include customer and contractor having rebate & performance clawed back, or customer could be ineligible for EE program participation for a period of time, or other consequence.

Staff concerned this affidavit carries no weight; legal follow-up/consequences could never be enforced.

1. **PA-administered customer interview or questionnaire** to verify influence and RUL of existing equipment.

Staff/ORA position in T1WG was that all surveys should be conducted by a an independent entity to make the POE determination. (This was articulated in the T1WG report.)

**Tier 3 Requirements:** (Projects with Incentives greater than $100,000)

Tier 3 projects should follow the “full rigor” process as articulated in Resolution E-4818.

*[No discussion on this item since E-4818 accepted the Full Rigor requirements.]*

# Staff Proposal on POE Tiers

Consider a step also to redefine the thresholds for Low/Medium Rigor, or break the Lower Rigor Path into very small and small projects.

Examples:

1. Consider a “Tier 0” (e.g., projects with incentives below $5,000) for which no rigor is warranted and we should make an automatic assumption in lieu of project-specific evidence. (Discuss how to determine what that lower threshold would be.)
* Stakeholders discussed a potential lower threshold for “Tier 0”. Staff confirmed that, although Resolution adopted the Tiers, T2WG can recommend an additional tier or redefining tiers, as long as backed by data and a logical reason.
* Halley recommended incorporating criteria for different sized projects within Tier 1 rather than creating a new Tier (e.g., if this is the only project the customer pursues through custom and they don’t have other sites, then OK to go low rigor)
* Initial suggestion (from Ecology Action) - $7,500.
* Jessee – shared examples from other states that have much higher thresholds (e.g., WV threshold is ~$35,000
* Reggie – what do/can we know about what class of types of projects are performing poorly and therefore need more rigor?
* [ACTION] Need to look at data to see percentage of projects, kWh, and incentives included in this bucket
1. Consider lower limits on what gets into the Custom pipeline (e.g., projects below XX cannot go custom, must go deemed) – Stakeholders acknowledged that very small custom projects may fall out of the pipeline; small custom projects get abandoned. We need to figure out how to support those very small custom projects.
2. Consider naming a Tier for the Small Business / Direct to Default projects

**Stakeholders reaffirmed that the discussion is for non-residential projects and the data need to reflect that (i.e., data should not include residential projects).**

Keith asked about minimum incentive level for custom projects, by IOU:

* PG&E - $2,000 minimum per project, based on initial assumption (e.g., if review determines the incentive level should be lower, the project can still go through) (similar for SCE)
* SCE - $2,200 (exception for residential ); level is based on cost of technical review ; if review cost dropped then the min. threshold could be reduced.
* SoCalGas – no minimum (because new construction is considered custom)
* SDG&E – no minimum

**PROPOSAL (Jeff)** – Potential proposal to reduce to two Tiers; need to determine the cutoff

* <=$XX,000
* > $XX,000

Jeff – the goals of these Tiers is not to convert projects that are already happening, the intent of lower tiers to create new activity (projects that are not currently happening for whatever reasons)

Josiah – like two tier, but cutoff should be above $25k (these projects are very different than $100k)

# Staff Proposal / Guidelines for POE

See slide 21 from [Meeting 2 PPT](http://t2wg.cadmusweb.com/Documents/Meeting%202%20-%20April%2026/T2WG_20170426_MeetingPPT.pdf)

**Staff requires 3 components for POE:**

1. Equipment Condition
2. Survey/Questionnaire – HVAC questionnaire (provided) is an example of types of information that would be requested in these surveys
3. Affidavit

These components should be required for all levels of rigor, but the amount/type of data would vary by rigor level. (The level of documentation varies for low, medium, high rigor levels)

## **Equipment Condition**

**1. Equipment Condition. Provide records of data that show the equipment exists and is operating,** such as:

* Evidence of operation – operating data that demonstrates the equipment is operating
* Evidence of repair – past maintenance / repair records
* Photo/Video may be acceptable in some cases, although a photo of the equipment doesn’t establish working condition.

Discussion:

* Examples of measure-specific requirements (e.g., lighting, refrigeration equipment).
* Can Staff provide examples of the expected documentation?
* How can we standardize the documentation requirements so project developers know “what rock to find”?

QUESTION – Can the requirement for equipment condition be met through the questionnaire (to be designed) with a picture?

* for projects <$25k – Staff says YES (Peter said Yes)
* for projects <$100k – TBD

QUESTION – Can we handle the evidence of operation in the questionnaire? (i.e., a photograph is not needed)

* Jeff – evidence of operation depends on the measure
* Confusion regarding whether maintenance records are valid
* No clear direction or resolution on this item; follow up with Staff [ACTION]

## **Survey/Questionnaire**

**2. Survey, questionnaire or interview to establish influence.**

* Must discuss decision process and how program influenced
* Must be conducted by independent party with no financial ties to project (critical that this party not have financial ties to the project)

There is no established survey for this process. Would need to develop the appropriate questionnaire; may need to be measure and market-specific (e.g., industrial vs. commercial)

Example Questions:

* Low Rigor
	+ How many times has the equipment broken in last 5 years?
	+ What is the average cost of repair?
* Medium Rigor
	+ Is the equipment critical to operations?
	+ What are the non-energy benefits of the projects? (e.g., reliability)
	+ Has the project been capital-budgeted? For how long?
	+ Does the project eliminate labor or reduce labor costs?
* High Rigor
	+ For large projects, Staff does customer interviews.

Discussion:

* What survey/questionnaire instrument would be used?
* What entity would conduct the survey?
* How does this fit into the project development process?
* How long is the survey (e.g., what level of effort is warranted)?

Spencer developing a draft of a potential questionnaire – see <http://t2wg.cadmusweb.com/> (direct links to documents are provided in the meeting notes)

**QUESTION: Who conducts the survey?**

* Stephen/LM – We need to remember that the customer already has [N] touch points; an additional independent 3rd party would be an additional touch point – adds cost and customer burden.
* Ryan – questioned whether a 3rd party administration solves the concern about “gaming” (example of person having 3rd party do taxes); does the 3rd party administration actually add value?
* Halley – 35d party administration adds touch points, is more expensive, adds little value (i.e., does not necessarily accomplish intent for avoiding potential for gaming). We need to remember that ABD802 is supposed to allow more projects. Remember that the customer is still paying for at least half the project
* Jessee/Cascade – can the implementer do the survey for Low Rigor Tier?
* Kay – these surveys ask the same questions that implementers are asking when developing a project; so what is the purpose of the additional survey [if not collecting new information]?; 100% in favor of having a documentation template; don’t see the value of having a 3rd party do an additional survey
* Spencer – purpose of the survey is to collect project data in standard form across the state.
* Sasha/ORA – ORA prefers 3rd-party administration; understands pragmatics of not doing this for lower tiers. If the program design is good and survey design is good, maybe don’t need a 3rd party survey; still prefer independent survey for higher Tiers because it’s too easy to coach customers. Need to think about it. [ACTION] Follow up with more details offline
* Jeff – survey may not be worth anything for small (<~$5,000?) projects;
* Sasha – ORA goal is to have a check to maintain accountability; like idea of reducing burden on customers and implementers
* Peter – we may need different approaches for different Tier? For example:
	+ Tier Low - customer
	+ Tier Med – IOU (e.g., account rep)
	+ Tier High – independent 3rd party (already defined as full rigor)
* Keith – would like to see some level of records to track how many projects pass or fail POE, to evaluate whether the process works <<follow up, Task 6>>
* Stakeholder requested that the questionnaire to be clear in baseline determination; Jeff clarified – the questionnaire does not determine eligibility; it is to determine which track of incentive level the project goes down

**QUESTION: How is the survey administered?**

In-person, phone, online (depends on Tier level)

**PROPOSAL (Rich)** – Can we eliminate the survey/questionnaire component, and replace with a separate audit (e.g., QC audit to investigate fraud) that would be conducted separately for a random sample of customers?

## **Affidavit**

**2. Affidavit. Staff requires “affidavit” with legal language and “consequences” of inappropriate findings**

Staff noted that past language from IOUs was not acceptable.

There is no existing form with appropriate language; T1WG need to develop this.

Staff provided **SCE Form 14-904** as an example of language that may be sufficient.

The example SCE provided provide example language that may be appropriate for customer certification of accurate information. [ACTION] Need to create an example affidavit that could be used during the POE process for AR projects.

E.g., From questionnaire: “By signing below, I certify that the above is true and correct to the best of my knowledge. I acknowledge that misrepresentation will result in a rejection of the project as an Accelerated Replacement.”

**QUESTION**: Are stakeholders comfortable with a requirement for customers to sign an affidavit with a similar format as below (next page)?

* Mark – concerned we are not making the process simpler for customers; programs are designed for customers and we are supposed to make the programs more accessible to customers (while protecting ratepayer $); the commission decision says the process is too complex, and not getting any easier
* Josiah – though content is OK, customer may still be afraid to sign this; penalty of perjury would be a non-starter for small customers/projects
* Halley – we should not be adding barriers like notation that customers may face jail time; not consistent with values of AB802
* Kay – don’t like the affidavit used in this context; customers should not be asked to sign something under penalty of perjury when they can’t be expected to understand the program processes – we can sign something with softer language
* Brian – this language is similar to language already on application forms; the term “perjury” could/would halt projects (e.g., city council not likely to sign)
* Ryan – projects already experience concerns about legal language (even before introducing this type of affidavit language)
* Peter – agree with Kay; affidavit language is not enforceable; include form with softer language

**Brainstorm on minimally-acceptable language:**

* Ryan – we want customer to read language before signing, but not feel compelled to run it up the chain. E.g., “I certify to PG&E and CPUC that this is all true and accurate”
* Jeff – should include “… and I understand that my participation in this program is being determined by my answers in this form”… If customers misrepresent information, that will affect opportunity for that project.
* Spencer – concerned about how repercussion are applied.
* Anuj – can we use a similar model as we use for SB1414 [ACTION] SCE will provide example; other IOUs have comparable examples]

EXAMPLE AFFADAVIT: Southern California Edison Company Micro-Business Self-Certification Affidavit ([link here](https://www.sce.com/NR/sc3/tm2/PDF/14-904.pdf))

In accordance with Decision (D). 10-10-032 and (D). 10-11-037, qualifying non-residential customers (excluding fixed usage and non-metered customers) may benefit from certain deposit and backbilling rules that apply to residential customers. If your business (aggregated by service account) had an annual usage of under 40,000 kWh during the previous calendar year, or had a monthly demand of less than 20 kW during the previous calendar year, Southern California Edison (SCE) qualifies you for these deposit and backbilling rules automatically.

If, however, your business does not meet the above-described usage or demand criteria, or for whom SCE lacks 12 months of data from the previous calendar year to make this assessment, you may use this form to self-certify that you qualify as a Micro-Business under the California Government Code.

The customer of record on the affected account may certify as a Micro-Business by self-certifying per the instructions below.

**I. Customer Declaration**

I,\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(name), hereby certify that I am authorized to make this declaration as the Customer or as an authorized representative of the Customer \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name on account).

I have personal knowledge of the matters set forth herein and, if called upon as a witness, could and would testify competently thereto.

I understand that, notwithstanding my signature below, if the information provided by me is not accurate, my business will not be considered a “Micro-Business” by SCE.

I hereby certify that my business qualifies as a Micro-Business, as defined in California Government Code 14837 (and as adjusted by the California Director of General Services). As of December 27, 2010, a Micro-Business is defined under California law as a small business which EITHER, together with affiliates, has average annual gross receipts of three million five hundred thousand dollars ($3,500,000) or less over the previous three years, OR is a manufacturer primarily engaged in the chemical or mechanical transformation of raw materials or processed substances into new products (classified between Codes 31 to 33, inclusive, of the North American Industry Classification System), with 25 or fewer employees.

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct. Executed this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_ at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*.* *(City, State)*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

**II. Customer Account Information**

Name on Account:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Current Service Account Number(s):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Service Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

City, State, Zip: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Meter Number(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# Summary of Stakeholder Discussion/Agreements/Actions

## **Tiers**

Staff proposal a “Tier 0” or change to existing thresholds to distinguish rigor requirements within the lowest Tier – acknowledging that requirements should differ for $5k and $25k projects. Although E-4818 accepted the Tier levels defined in T1WG, T2WG stakeholders agreed a well-reasoned proposal to modify the Tier levels is appropriate for the T2WG report.

* [ACTION] Examine data to determine what should constitute “Tier 0” projects or other Tier boundaries; need to exclude residential data – examine potential to determine new cutoff numbers
* [ACTION] Stakeholders should submit proposals (based on some data or logical argument) for new Tier levels or a split within Tiers to allow for expedited/simplified review of small projects

## **Equipment Operation**

* Can this requirement for equipment condition be met through the questionnaire (to be designed) with a picture?
	+ for projects <$25k – Staff says YES (Peter said Yes)
	+ for projects <$100k – TBD (Probably not)
* ACTION – Need clear guidelines and examples of appropriate evidence of operation; may be different for different measures.

## **Survey/Questionnaire**

### Content

* ACTION Design questionnaire (look for other examples) – Spencer Lipp designed an example that several stakeholders have already provided comment on
* ACTION Review draft questionnaire and send comments in
* ACTION Collect input from staff on types of questions that should be included in the questionnaire
* ACTION Collect input from staff on types of questions that should be included in the questionnaire

### Administration

We still have discussed how much value that 3rd party administration of questionnaire adds to the process and who is an appropriate administrator of a survey or questionnaire that examines program influence.

* Implementers and IOUs disagree that the questionnaire needs to be conducted by a 3rd party.
* ORA prefers 3rd-party administration; understands pragmatics of not doing this for lower tiers, but still prefer independent survey for higher Tiers.
* Staff recommends different approaches for different Tier?
	+ Tier Low - customer
	+ Tier Med – IOU (e.g., account rep)?
	+ Tier High – independent 3rd party (already defined as full rigor)
* Stakeholders asked: Is the questionnaire necessary if all relevant data are collected in the audit (or other existing processes)? Staff (Peter) responded that, for some size of projects, these data should be collected at the project level, but could be collected by the implementer. For even smaller projects, the questions should be part of program design
* Staff (Peter) suggested different administration entity based on Tier. For example:
	+ Tier Low - customer
	+ Tier Med – IOU (e.g., account rep)
	+ Tier High – independent 3rd party (already defined as full rigor)
* [ACTION] Need proposals and responses on survey administration by Tier level (or other customer/project indicator).
* [ACTION] Consider “ex post audit” proposal from Rich - Can we eliminate the survey/questionnaire component, and replace with a separate audit (e.g., QC audit to investigate fraud) that would be conducted separately for a random sample of customers?
* [ACTION] Follow up on previous conversations about survey administration. Methods of survey administration will likely vary by Tier level.

## **Affidavit**

* Agreements to soften language on affidavit; remove reference to perjury; look at language in SB1414 as an example
* ACTION Collect example affidavit language, e.g., SB1414 – SCE provided a sample program form with representative language.
* ACTION Develop template affidavit language