

TECH Clean California Tariffed On-Bill Investment Pilot

Stakeholder Working Group, Workshop #2

Threshold legal issues

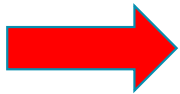
October 7, 2021



The TECH Clean California initiative is funded by California gas corporation ratepayers under the auspices of the California Public Utilities Commission.



We Are Here:



Session	Date	Topic
#1	Sept. 23	Goals and metrics, workplan and timeline
#2	Oct. 7	Tariff terms, authority to adopt, ownership of assets
#3	Oct. 21	Customer economics
#4	Nov. 4	Consumer protections
#5	Nov. 18	Information system requirements
#6	Dec. 2	Supply Chain, Quality Assurance, Risk Mitigation
#7	Dec. 16	Implementation Plan, Timeline, Budget

Workshop #2 Agenda

- 1 Introductions
- 2 Utility authority to adopt
- 3 Ownership of investment assets
- 4 Customer eligibility
- 5 Tariff terms
- 6 Prevailing wage considerations



Who's In the Room?

- Name, preferred pronoun, organization, role

Please note:

- Are there other members of your organization working/likely to work on TOB?
- What do you hope to get out of these working group meetings?
- Do you expect to have design ideas, proposals or research to share during these workshops?

Workshop Format & Ground Rules

Workshop objective: Information sharing and feedback on opportunities and challenges, pros and cons of program design alternatives from stakeholders who might implement a program.

Not a joint decision-making process.

Workshop discussions are **off the record**. Notes and recordings are for the benefit of Working Group participants only.

All meetings will be recorded and shared with workshop stakeholders

Resources: to be posted on SharePoint site for workshop attendees, recordings, presentation slides, draft documents, etc

Gathering Feedback & Information

During Workshops

- Opportunities for Q&A
- TOB team will solicit direct feedback through questions and open discussion
- Participants can share their proposals or information on different topics (ideally scheduled ahead of time)

Following each Workshop:

- A survey will be sent to each participant giving them opportunity to provide answers or feedback on key issues
- Sometimes (including today), the survey will include material mentioned but not described in detail during the presentations
- We encourage you to complete those right away, following each workshop, but no more than one week later
- Surveys are to generate feedback to TECH team; results will not be distributed

Workshop #2: Threshold legal issues

- Utility authority to adopt
- Ownership of investment assets
 - Operational responsibility
 - Financial accounting, depreciation, reflecting assets on balance sheet
- Customer eligibility
 - Automatic application of tariffed terms to successor customer
 - Provisions specific to tenants and landlords
- Tariff terms
- Requirements for prevailing wage

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Utility Authority to Adopt



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Utility Authority to Adopt

- POUs: governing bodies have authority to set rates under article XI, Section 9 of the CA Constitution
- IOUs: CPUC has authority to set rates for utilities under article XII, Section 6 of the CA Constitution
- IOU precedent for site-specific investments provided by Electric Tariff Rule 2
- Authority for CCA to Adopt
 - In principle, CPUC could direct or permit an IOU to adopt a TOB tariff, under which a CCA could then make an investment. IOU would recover investment costs per CCA direction and pass revenue through to CCA to repay capital provider
 - BDC & CCAs will seek a meeting with CPUC to confirm CPUC's ability and willingness to approve such a structure as part of Clean Energy Finance Proceeding.

Determination that Tariff is not a Consumer Loan

Design principles:

- TOB adopts a shared savings approach that avoids imposing new debt obligations on customers
- CPUC and public agency governing boards have full oversight authority to enforce consumer protections, rendering DFPI oversight duplicative.
- Historical context: In 2006, in response to IOU request, Department of Financial Protection and Innovation (DFPI) issued Commissioner's Release – Finance Lender Law: 60 FS
 - Utilities are exempt from Financial Code Section 22100 when they make zero-interest loans for energy efficiency upgrades to nonresidential customers
 - See <https://dfpi.ca.gov/commissioners-release-60-fs/>

Recommendation: TECH coordinate with IOUs to determine need for ruling and seek FS if needed

Questions

- Is utility authority to adopt a settled issue?
- Is comparable FS needed for tariffed investments for residential customers in which costs are recovered via shared savings mechanism?

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Ownership of Investment Assets



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Ownership of Investment Assets

Design principle: decouple and assign obligations and benefits of ownership to:

- Ensure customer expectations and needs for space conditioning and hot water are met
- Enable site-specific investments to be recovered
- Be consistent with existing law, utility regulations and collections, and real estate practice

Recommendations:

- Draft program design with intent to delegate and assign the rights, responsibilities, and benefits, to balance customer protections with program and utility requirements
- Understand, support, and help facilitate the definition and resolution of related legal and regulatory issues and concerns

Ownership: Delegating Key Terms and Conditions

	Asset ownership and depreciation	Provide functioning heat and hot water system	Ensure products are used as intended	Ensure products perform as expected	Restore failed products to service	Be liable for damage to equipment	Repay investment regardless of collections
Owner of site		X	X			X	
Customer at site			X			X	
Program implementer (3 rd party)				X	X		
Program Sponsor (IOU/POU, CCA, 3 rd party)	X/?			X	X		X/?
Utility Collections (IOU/POU)							

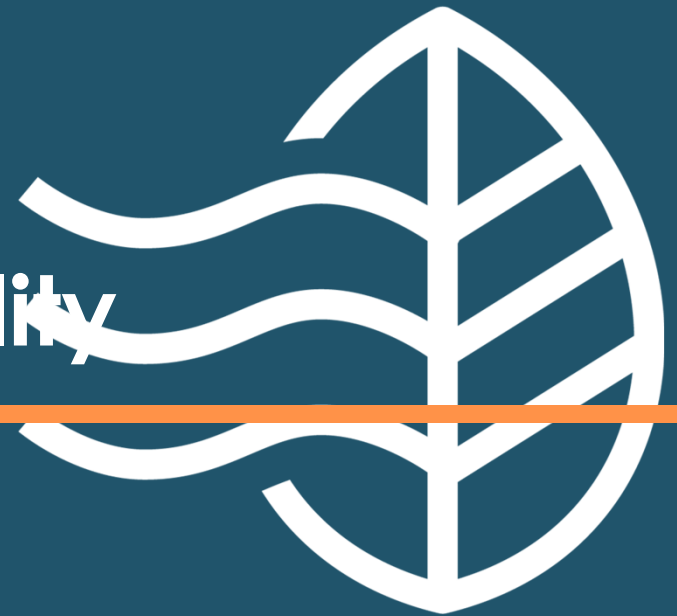
Working Hypothesis: it is possible delegate and assign the rights, responsibilities, and benefits across these different parties to address critical issues for ownership. Precedent and guidance from CPUC and other state agencies offer a path, but official interpretations need to be sought.

Questions

- Does the proposed delegation of roles/responsibilities allow for a rational allocation of risks and rewards between key parties?
- Would your risk management and legal teams agree that this delegation is rational and possible?

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Customer Eligibility



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Customer Eligibility

Design principle: serve all residential customers with meaningful utility bill savings opportunities (and only those residential customers!)

- Residential single family to start
- Expand to multifamily in subsequent phase
- Conduct meter-based screening for investment opportunities; e.g., customers with high gas consumption & high cooling loads (See Workshop #3 Customer Economics)

Recommendations:

- Recommend against setting income eligibility criteria for production-scale program but may need to consider narrower eligibility for the pilot.
- Emphasize service to selected customer segments via targeted marketing and outreach

Application of Tariff Terms to Successor Customers: Notifications

Design principles:

- Ability to assign tariff to site rather than a person and apply terms to successor customers is a critical feature for resolving landlord-tenant split incentive barrier
- Cost recovery line item is for an essential service, like generation, transmission, and distribution. No opt in / opt out.
- **Notification requirements**
 - For home buyers, ideal method is to record a Resource Efficiency Notice on the property records
 - Enabling legislation may be required. TECH & BDC exploring options.
 - For renters, require landlord to notify prospective tenants
- **Recommended best practices**
 - Utility include notification in new customer welcome letter
 - Help owner to market upgraded property by offering to install a plaque on the housing unit
 - If possible, communicate expected utility bill savings on the bill in conjunction with the cost recovery charge

Application of Tariff Terms to Successor Customers: Bill Protections

Design principle: Financial interests of the successor customer(s) should be given equal consideration to those of the current occupants.

Recommendation:

- During the project planning phase, estimate expected bill savings 2 ways:
 1. Under current observed operating conditions (i.e., the current customer's interest)
 2. Under "typical" operating conditions, incorporating any expected degradation in equipment performance (ie, the successor customer's interest)
- Use the lower of the two estimates for determining project scope and the portion of costs that will be recovered via the tariff

Tenants and Landlords

- **Design principles:**

- Landlord must consent to let the utility program sponsor to install resource efficiency upgrades in their building.
- Landlords continue to have a fiduciary duty to provide space heating and hot water services to their tenants.

Recommendation:

- Require landlord copayment for space conditioning and water heating upgrades
- Calculate copayment as like-for-like replacement cost, minus remaining value of existing equipment

Questions

- Any scenarios in which successor customer interests remain inadequately accounted for?
- Any scenarios in which rights and responsibilities of tenants and landlords remain inadequately accounted for?

(There may be more to say on these topic when we discuss Consumer Protections in Workshop #4.)

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Tariff Terms



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Tariff Terms

- Tariff terms should address the following
 - Applicability. Service territory, customer eligibility
 - Funding Conditions
 - Site Conditions
 - Approved Products and Services
 - Customer Responsibilities
 - Cost Recovery/Eligible Program Charges and Fees
 - Noticing to Successor Customers

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Prevailing Wage Considerations



Requirements for Prevailing Wage

Design principle. Benefits from prevailing wage and high-road workforce requirements accrue to society, not to individual customers. Associated costs should not be assigned to participating customers.

- Need to consider options for
 - Sources of capital
 - Delivery channels
 - Sponsor-installer contractual relationship
- Then address
 - Legal requirements
 - Internal policy commitments
 - Implications for installation costs & customer economics

Recommendation:

- Allocate funds to pay for prevailing wage / high road workforce requirements

OR

- Seek prevailing wage exemption for single family and multifamily site upgrades

Questions

- Would program sponsors be able to allocate funds to pay for prevailing wage / high road workforce requirements?
- Should prevailing wage guidance from Department of Industrial Relations be sought? And if so, when (recent determinations have taken up to 13-14 months)?

Thank You

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