

**PUBLIC UTILITIES COMMISSION**

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March 6, 2023

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**Subject: Energy Division Approval of the Center for Sustainable Energy Advice Letter 138-E-A “Proposed Substantive and Minor Revisions to the Solar on Multifamily Affordable Housing (SOMAH) Program Handbook” 6<sup>th</sup> Edition**

Dear Ms. Ninow,

This disposition letter approves the Center for Sustainable Energy (CSE) advice letter (AL) CSE 138-E-A “Proposed Substantive and Minor Revisions to the Solar on Multifamily Affordable Housing (SOMAH) Program Handbook” proposing Handbook 6<sup>th</sup> Edition pursuant to Decision (D.) 17-12-022, effective February 24, 2023.

D.17-12-022 ordered that the initial SOMAH Program Handbook be submitted via a Tier 3 AL while Handbook adjustments may be proposed by the program administrator via a Tier 2 AL.<sup>1,2</sup> Pursuant to D.17-12-022, CSE submitted Handbook adjustments to enhance the program’s application process in CSE AL 138-E on September 29, 2022, and provided substitute sheets on November 9, 2022 and December 14, 2022. CSE submitted supplemental AL 138-E-A on February 10, 2023, superseding the prior submittals.

The Public Advocates Office (Cal Advocates) filed a timely protest on October 19, 2022. On October 26, 2022, CSE filed a timely reply seeking to dismiss the protest in full. On December 27, 2022, Cal Advocates requested to re-open the protest period to respond to CSE’s substitute sheets and Energy Division granted the request on December 29, 2022. Cal Advocates filed a timely protest on January 13, 2023. CSE filed a timely reply on January 23, 2023, seeking again to dismiss Cal Advocates’ January protest and stating its plan to withdraw the protested portions of the proposed Handbook changes. On February 10, 2023, CSE filed supplement advice letter CSE AL 138-E-A which replaced CSE AL 138-E in its entirety.

Energy Division finds that CSE 138-E-A SOMAH Program Handbook 6<sup>th</sup> Edition complies with D.17-12-022 and is approved. Attachment 1 contains a detailed discussion of the background, protests, reply, supplemental and staff’s determination.

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<sup>1</sup> D.17-12-022 Ordering Paragraph 1

<sup>2</sup> IBID Appendix B at page 1

Please direct any questions regarding Energy Division's findings in this disposition to Sarah Lerhaupt ([sarah.lerhaupt@cpuc.ca.gov](mailto:sarah.lerhaupt@cpuc.ca.gov)).

Sincerely,

 FOR

Leuwam Tesfai  
Deputy Executive Director for Energy and Climate Policy/  
Director, Energy Division  
California Public Utilities Commission

cc:  
Mike Campbell, Program Manager, Public Advocates Office  
Justin Ong, Analyst, Public Advocates Office

## Attachment 1

### **Background**

Decision (D.) 17-12-022 began implementation of Assembly Bill (AB) 693 (Eggman, 2015) by, among other things, creating the Solar on Multifamily Affordable Housing (SOMAH) program. SOMAH provides incentives to qualified affordable multifamily housing properties to install distributed generation energy systems, whose economic benefits must primarily accrue to tenants. While the main program elements were set in Public Utilities Code 2870, D.17-12-022 established that the SOMAH program would be administered by a statewide third-party program administrator (PA) and ordered that the selected PA file an initial proposed program implementation plan and program handbook via a Tier 3 advice letter (AL). D.17-12-022 specified that the PA could request adjustments to the approved SOMAH Program Handbook (referred to further as the “Handbook”) via a Tier 2 AL.<sup>3,4,5</sup>

In conformance with D.17-12-022 and on behalf of the entire SOMAH PA team, the Center for Sustainable Energy (CSE) filed advice letters CSE 138-E and CSE 138-E-A requesting to modify the Handbook.<sup>6</sup> The impetus for the Handbook changes came from recent SOMAH Evaluation report recommendations and stakeholder input.<sup>7,8</sup> CSE’s requested changes were to:

- Amend the Reservation Request requirements by reducing paperwork and releasing important energy usage information sooner in the process.
- Remove the Application Deposit, unless a waitlist is triggered, and return previously forfeited funds. This change was removed with submittal of AL 138-E-A.
- Increase the time allowed for Upfront Technical Assistance.
- Increase the time allowed for Energy Efficiency Compliance.
- Permit a remote Final Site Inspections option on a permanent basis.
- Clarify eligibility for potential participants currently receiving unbundled service from a Community Choice Aggregator (CCA).

From these Handbook changes, CSE predicted the following positive program outcomes:

- Streamline program requirements and add clarification for CCA customers.
- Eliminate real or perceived financial barriers of application deposit.
- Support re-entry for 33 cancelled projects by returning forfeited deposits.

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<sup>3</sup> D.17-12-022 Ordering Paragraph 1

<sup>4</sup> Resolution E-4987 (2018) approved the first SOMAH Program Implementation Plan and Program Handbook

<sup>5</sup> Previous SOMAH Program Handbook Advice Letters from Center for Sustainable Energy (CSE) include 105-E, 114-E-A, and 118-E-A

<sup>6</sup> The SOMAH PA consists of four organizations: the Center for Sustainable Energy, GRID Alternatives, the Association for Energy Affordability, and the California Housing Partnership Corporation.

<sup>7</sup> SOMAH Program Phase 2 Evaluation Report, CALMAC ID CPU0330.02, by Verdant and Associates, October 2021

<sup>8</sup> The SOMAH PA meets regularly with Energy Division and runs quarterly public forums and an Advisory Council (of non-profit and property owner representatives) to solicit program development feedback.

- Support for property owners, especially those newer to solar, who need more time for additional upfront assistance and the Track A bidding process.<sup>9</sup>
- Provide a realistic timeframe to complete energy efficiency activities and ending administrative burden to process Energy Efficiency related suspensions, without impacting the 18-month application timeline.
- Reduce time and travel costs for final inspections.

## Protests and Reply

Cal Advocates filed a timely protest on October 19, 2022, arguing that CSE’s proposal to remove application deposits is unreasonable and that returning previously forfeited funds will harm ratepayers. Also, Cal Advocates states that both changes are inappropriate for a Tier 2 AL, commenting that “[g]ranting either request is not ministerial” since it requires “the exercise of judgement and discretion.”<sup>10</sup>

Cal Advocates pointed to language in D.17-12-022 that “[t]he assigned Commissioner and/or ALJ will determine if suggested program changes require modification of a Commission order, and if so, the change would be considered by the full Commission, following notice to parties and an opportunity to comment” as evidence that these matters cannot be a part of a ministerial advice letter process. In the event that its procedural objection is not sustained on substantive grounds, Cal Advocates contends that an application deposit “improves administrative efficiencies ... by helping screen [out] lower-quality projects” and so should be left in place.<sup>11</sup> Cal Advocates describes the prospect of returning forfeited deposits as a “windfall” for a small group and that these funds specifically should be used to offset program administrator costs.<sup>12</sup>

Regarding the collection of application deposits, Cal Advocates states that deposits are not a known barrier and that they improve program efficiency. Cal Advocates finds CSE’s justifications to be speculative and notes that the recent SOMAH Program evaluation did not mention deposits as a barrier. Cal Advocates suggests it’s unlikely that the deposit is or can be a burden since the application deposit is a small percentage of overall costs and there are ways to ameliorate it.<sup>13</sup> Cal Advocates further points out that application deposits are a common component and exist in similar programs like the Self-Generation Incentive Program. Cal Advocates expresses concern that eliminating the application deposit will lead to lower quality applicants, thus running up administrative costs unnecessarily.<sup>14</sup>

Regarding returning forfeited application deposits, Cal Advocates argues that applicants with forfeited deposits have no expectation of reimbursement and that “retroactive reimbursements

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<sup>9</sup> The SOMAH Program Handbook defines Track A participation as for those property owners “who would like to receive Technical Assistance services from the PA to help assess the solar potential at their property, and/or identify eligible contractors for their project.”

<sup>10</sup> Cal Advocates at page 3

<sup>11</sup> Cal Advocates, page 1

<sup>12</sup> IBID

<sup>13</sup> CSE Advice Letter 133-E and 133-E-A

<sup>14</sup> Cal Advocates at page 4

would be unjust because they ... were not offered to other prospective applicants at the time.”<sup>15</sup> Additionally, Cal Advocates disagrees with CSE that refunding deposits will lead to cancelled projects reapplying and argues that this is a contradiction of the 2021 Phase 2 SOMAH Program Evaluation which found that cancelled projects (of those studied) are unlikely to reapply. Cal Advocates proposes that the \$161,250 of forfeited application refunds should be used to offset program administration collections.

On October 26, 2022, CSE filed a reply rebutting Cal Advocate’s protest on the basis that proposed Handbook changes are not limited to evaluation report recommendations, and more specifically, application deposits have less value in equity programs like SOMAH. CSE states that reserving an incentive still has robust requirements and refunding forfeited application deposits undoes an unnecessary penalty. Additionally, CSE points out that currently, the most common reason for cancelling a SOMAH project is financial troubles, which was not the case when the 2021 SOMAH Evaluation concluded its research. CSE also rebuts Cal Advocate’s position that these requests are inappropriate for Energy Division’s disposition under a Tier 2 AL, with the reasoning that “the application deposit was not considered nor discussed in Resolution E-4987” so there is no Commission order on this topic.<sup>16</sup>

On November 9, 2022, CSE filed substitute sheets with corrections to the Handbook to clarify that the application deposit will be re-introduced only if a waitlist is triggered and corrected proposed CCA participant language to clearly reflect previous Decision direction. On December 14, 2022, CSE filed two substitute sheets replacing pages 72 and 92 of Attachment A in CSE 138-E, correcting additional inconsistencies that the application deposit is only for waitlisted projects.

The substitute sheets did not adjust CSE’s initial request. However, on December 27, 2022, Cal Advocates requested to reopen the protest period, contending that the changes made by CSE were substantial, and not minimal.<sup>17</sup> Energy Division granted the request, reopening the protest period and accepting Cal Advocates’ proposed timeline for protests and replies on December 29, 2022.<sup>18</sup>

Cal Advocates submitted its second protest on January 13, 2023, which reiterated the same position: that the deposit requirement should remain as-is. Cal Advocates also points out that there are currently no waitlists in any of the SOMAH Program participating utility service territories and shared again that it would be prudent to defer a decision on application deposits until after the ongoing program evaluation closes.<sup>19,20</sup> In its January 23, 2023, reply to protest, CSE states that Cal Advocates did not follow General Order 96-B, Section 7.5.1 since “Cal Advocates restates arguments from its prior Protest of the Advice Letter” and asks for Cal Advocates’ protest to be wholly dismissed.<sup>21</sup>

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<sup>15</sup> Cal Advocates at page 5

<sup>16</sup> CSE Reply at page 6

<sup>17</sup> Rachel Gallegos on behalf of Wayne Parker, Email, December 27, 2022

<sup>18</sup> Sarah Lerhaupt Email, December 29, 2022

<sup>19</sup> Cal Advocates Protest, October 19, 2022, at page 3

<sup>20</sup> Cal Advocates Protest, January 13, 2023, at page 1-2

<sup>21</sup> CSE ‘Reply To Protest’, January 23, 2023, at page 2

In its reply CSE also stated a shift in its position, remarking “Nevertheless, the SOMAH PA would like additional time to examine the issues surrounding the removal of the application deposit requirement for all SOMAH projects and will use this time to consider other options that would be successful in achieving the same goal.”<sup>22</sup> CSE agreed with Cal Advocates that the ongoing program evaluation may provide additional insights. CSE re-confirmed its position that the application deposit removal is a sound choice that will benefit applicants but found that it can wait for a short period as there is “sufficient latitude” with the current application deposit rules in-place to waive them for priority groups.<sup>23</sup> CSE signaled that it intended to submit a supplement with a revised Handbook withdrawing its proposal to remove application deposits.

On February 10, 2023, CSE submitted AL 138-E-A which removed application deposit changes and the treatment of forfeited deposits. The withdrawal of the protested components of the Handbook resolves Cal Advocates’ protests.

## **Discussion**

The proposed Handbook changes for adjusting Upfront Technical Assistance and Energy Efficiency Compliance time periods, adding remote site inspections, and clarifying CCA tariff eligibility were uncontested.

In its protests, Cal Advocates put forward a general concern regarding whether a Tier 2 designation was appropriate for this advice letter. Cal Advocates further contended that if a Tier 2 designation is in fact appropriate, then Cal Advocates disagreed with the removal of application deposits and the return of previously forfeited funds.

### *A Tier 2 Advice Letter is Permissible*

As to whether the proposed Handbook changes requested by CSE are eligible under a Tier 2 designation, we dismiss Cal Advocate’s protest, as its reliance on the difference between ministerial or discretionary activities is essentially semantics, not the policy set by the Commission in D.17-12-022.

When confronted with a similar debate the Commission put forward this rationale in D.02-02-049 that “Legislation need not spell out in minute detail the manner in which an agency is to proceed or eliminate all discretion” meaning that not all discretion and judgement can be scrubbed out of duties delegated to the Commission or thereby to staff.<sup>24</sup> That Decision then concluded that the Commission is permitted to “process advice letters effectively and expeditiously by relying on staff to review the thousands of advice letters we receive annually and take ministerial action pursuant to pre-determined criteria.”<sup>25</sup>

In the case of SOMAH, the pre-determined criteria are the essential program elements in Public Utilities Code 2870, D.17-12-022 and the Program Implementation Plan and Program Handbook

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<sup>22</sup> CSE ‘Reply To Protest’, January 23, 2023, at page 5

<sup>23</sup> IBID

<sup>24</sup> D.02-02-049 at page 4

<sup>25</sup> IBID at page 20

adopted in Resolution E-4987. In particular, in D.17-12-022 the Commission permitted adjustments to the Handbook via a Tier 2 Advice Letter.<sup>26</sup> Cal Advocates' reference to the assigned Commissioner or ALJ making a determination "if suggested program changes [in an advice letter] require modification of a Commission order" is a general statement about how the Commission works, not a policy unique to the SOMAH program or an automatic limitation on any proposed Handbook changes. Most importantly, Cal Advocates did not point to what Commission Order(s) the requested relief violates. We concur with CSE's contention that its proposed Handbook changes do not necessitate a change to any Commission Orders and therefore, dismiss this part of Cal Advocate's protest. The collection of application deposits was created as a program practice in the initial Handbook adopted in Resolution E-4987. It follows that this element of the Handbook is part of the many program processes that can be amended via the Tier 2 Advice Letter process.

*Regarding Removing Application Deposits*

As CSE has elected to withdraw this proposed change from their Handbook, Cal Advocate's protest on this matter is moot.

*Returning Application Deposits*

As CSE has elected to remove this request from their Handbook, Cal Advocate's protest on this matter is moot.

*Cal Advocates Contravenes General Order 96b Section 7.5.1*

As CSE has elected to remove the protested requests (on application deposits and returning application deposits from their Handbook), whether Cal Advocate's protest on January 13, 2023, adhered to General Order 96B Section 7.5.1 is moot.

In summary, Cal Advocate's protests of CSE AL 138-E are dismissed or resolved by the submittal of AL 138-E-A. Therefore, Energy Division approves CSE AL 138-E-A, effective February 24, 2023.

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<sup>26</sup> D.17-12-022 at page 28-30 and Appendix B