

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 6

TO: Valley Clean Energy Alliance Board of Directors

FROM: Mitch Sears, Sustainability Manager, City of Davis
Taro Echiburu, Community Services Director, Yolo County
Shawn Marshall, LEAN Energy US

SUBJECT: VCEA Implementation Actions

DATE: February 14, 2017

RECOMMENDATIONS:

1. Adopt Spring 2018 as the target launch date for VCEA.
2. Approve VCEA Advisory Committee conflict of interest policy.

BACKGROUND & DISCUSSION: On January 17, 2017 the Board of Directors discussed the critical path timeline for launch and development of a conflict of interest policy for the VCEA Advisory Committee. Staff is returning with recommendations related to the following items:

- A. Revised target launch date.
- B. Adoption of a conflict of interest policy for the VCEA Advisory Committee.

A. Revised Target Launch Date

The VCEA Board has been considering two possible timeframes for commencement of electric service predicated upon a number of factors including program economics, compilation of a full vendor team, and the ability to hit key implementation milestones. The first option is a “fast track” start-up timeline that would enroll customers in October 2017, and the second is a more pragmatic timeline that would enroll customers in March/April 2018. Staff identified and presented the pros and cons for each option to the Board at pre-JPA planning sessions and acknowledged the challenge of a Fall 2017 launch while continuing to work toward it as the preferred option.

As noted in item 5.a above, staff received a letter from the vendor RFP subcommittee expressing concern about the fast track timeline and recommending additional time for a more systematic consultant interview process. Given the feedback and tenor of previous Board discussions on this topic, staff is supportive of the subcommittee’s recommendation and mindful of its implications. These include:

- 1) *Implementation and staff costs may modestly increase due to an extended planning horizon.* The steps in the process do not change, but they go on longer and higher incremental costs may occur in the areas of project management, public outreach, CEO and staffing costs. These cost impacts will be mitigated by the additional line of credit scheduled to be approved in May and in place by June 2017.
- 2) *The City of Woodland may choose to join before VCEA's Implementation Plan is submitted to the CPUC.* This scenario has beneficial planning and cost implications for VCEA, mitigating the need to amend VCEA's Implementation Plan and administer a separate customer enrollment and noticing process.
- 3) *The cost of power and PCIA exit fees may be higher or lower with a 2018 launch.* It is impossible to know today how the PCIA fees will shift, but staff will monitor this closely. Market rates for system power (i.e. natural gas) are trending slightly higher, but PCIA rates tend to reflect market rates in an inverse relationship so the overall financial impact on a 2017 vs. 2018 launch is likely to be minimal.
- 4) *A Spring launch is generally viewed as most economically advantageous for a new CCE program.* April marks the beginning of the summer tariff schedule which lasts through October each year. Summer tariff rates are generally higher than winter rates resulting in higher revenues for VCEA in its first six months of operations.

Weighing these primary factors, Staff and VCEA's consultant support a shift to a Spring 2018 launch as shown in the attached Critical Path Timeline previously identified as "Option B".

B. Conflict of Interest Policy – VCEA Advisory Committee

At the January 17, 2017 Board meeting, VCEA Legal Counsel (Harriet Steiner), led a discussion about the development of a conflict of interested policy for the newly formed VCEA Advisory Committee. Counsel noted that the Advisory Committee is purely an advisory body, and its members are therefore not subject to the Political Reform Act (PRA), Fair Political Practices Commission (FPPC) regulations, and many State conflict of interest rules. The Board provided general direction to design a draft policy that did not discourage participation by a diverse set of ratepayers, including farming and business interests. The Board provided feedback on a series of questions developed by Counsel and provided the following general guidance to staff:

- Disclosures. Advisory Committee members should provide the same disclosure as a public official would use for the Political Reform Act (PRA).
- Interests subject to disclosure. Focus on interests related to the electrical energy industry – energy procurement and generation and then additional topics on a case by case basis.
- Real Property. Real property disclosures not needed at this time but may in the future as VCEA engages in decisions about siting energy projects.

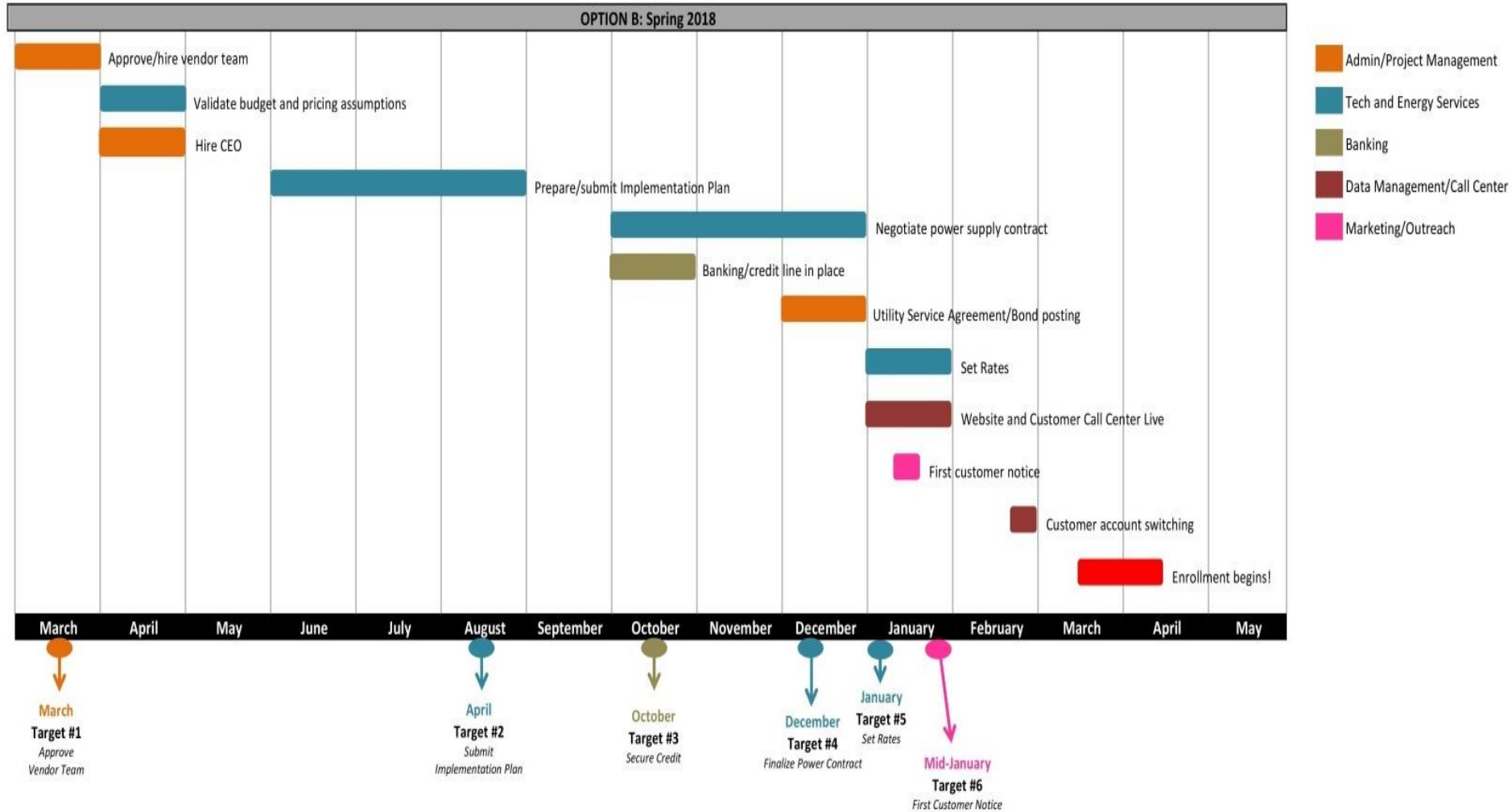
- Disclosure thresholds. VCEA Counsel and staff to propose in draft policy.
- Financial interest. If there is a financial interest then use the same standards as the Political Reform Act for determining disqualification.
- Disclosure process. Require annual disclosure but also disclosure for conflict purposes on the real time basis (i.e. interests held when the item comes before the committee)
- Failure to disclose. Board discretion to determine if the non-disclosure warrants removal.

The recommended draft policy incorporates the guidance from the Board. In addition, staff added a provision that does not require disclosure of small scale residential or commercial renewable energy generation facilities (e.g. roof-top solar PV of 100kW or less in size). If adopted, newly appointed and future Advisory Committee members will be required to submit disclosure information to VCEA.

Attachments

- Critical Path Timeline (previously Option B)
- Draft VCEA Advisory Committee Conflict of Interest Policy

VCEA Critical Path Timeline – Spring 2018 Launch



Valley Clean Energy Alliance

Advisory Committee – VCEA Conflict of Interest Policy

I. Purpose and Scope

The purpose of this Policy is to establish guidelines for the disclosure of potential conflicts of interest by members of the Valley Clean Energy Alliance (“VCEA”) Advisory Committee (“Committee”). The Committee is purely an advisory body, and its members are therefore not subject to the Political Reform Act (“PRA”), Fair Political Practices Commission (“FPPC”) regulations, and many State conflict of interest rules. Nevertheless, VCEA wishes to ensure that any member’s material financial interests that may be affected by matters on which VCEA seeks input from the Committee are publicly disclosed and known by the VCEA Board when considering the Committee’s advice and/or that the Committee Member is disqualified from participating in providing advice on particular matters which may materially affect the Member’s financial interests.

II. Financial Interests Subject to Disclosure

A. This policy requires the disclosure of any Qualifying Interest. A Qualifying Interest is a financial interest owned by the Committee Member or the Committee Member’s affiliates’ that: (1) for sources of income, generates more than \$500 of personal income in any year, and (2) for business entities or investments, is worth more than \$5,000 or (3) by the amount(s) for sources of income, business entities and investments that would be require disclosure under the PRA and the FPPC Regulations, whichever is greater. In determining whether an interest requires disclosure or disqualification, the Committee Member and VCEA shall look to the standards in the PRA and the FPPC Regulations. A Committee Member’s “affiliates” means the Committee Member’s direct family (parents, spouse, siblings, minor

children, and dependents), employer, or any business entity in which the Committee Member and the Committee Member's Affiliate owns more than 5%.

B. As used in this Policy, a "Qualifying Interest" is any financial interest of the Committee Member or his or her Affiliate(s) in a "Business Entity," an "Investment," or a source of "Income," as these terms are defined in the PRA¹ and the FPPC Regulations.

¹ Government Code § 82005: "Business entity" means any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.

Government Code § 82034: "Investment" means any financial interest in or security issued by a business entity, including, but not limited to, common stock, preferred stock, rights, warrants, options, debt instruments, and any partnership or other ownership interest owned directly, indirectly, or beneficially by the public official, or other filer, or his or her immediate family, if the business entity or any parent, subsidiary, or otherwise related business entity has an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction, or has done business within the jurisdiction at any time during the two years prior to the time any statement or other action is required under this title. An asset shall not be deemed an investment unless its fair market value equals or exceeds two thousand dollars (\$2,000). The term "investment" does not include a time or demand deposit in a financial institution, shares in a credit union, any insurance policy, interest in a diversified mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940 or in a common trust fund created pursuant to Section 1564 of the Financial Code, interest in a government defined-benefit pension plan, or any bond or other debt instrument issued by any government or government agency. Investments of an individual includes a pro rata share of investments of any business entity, mutual fund, or trust in which the individual or immediate family owns, directly, indirectly, or beneficially, a 10-percent interest or greater. The term "parent, subsidiary or otherwise related business entity" shall be specifically defined by regulations of the commission.

Government Code § 82030 - "Income" means, except as provided in subdivision (b), a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse. Income also includes an outstanding loan. Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. "Income," other than a gift, does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement or other action is required under this title.

(b) "Income" also does not include:

- (1) Campaign contributions required to be reported under Chapter 4 (commencing with Section 84100).
- (2) Salary and reimbursement for expenses or per diem, and social security, disability, or other similar benefit payments received from a state, local, or federal government agency and reimbursement for travel expenses and per diem received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.
- (3) Any devise or inheritance.
- (4) Interest, dividends, or premiums on a time or demand deposit in a financial institution, shares in a credit union or any insurance policy, payments received under any insurance policy, or any bond or other debt instrument issued by any government or government agency.
- (5) Dividends, interest, or any other return on a security which is registered with the Securities and Exchange Commission of the United States government or a commodity future registered with the Commodity

Qualifying Interests shall be limited to those that are in the Electric Energy Business, including but not limited to businesses that generate, sell, and /or operate electric generation, and those Qualifying Interests in Electric Energy Business related Data Processing and Call Center operations and management.

The VCEA Board may modify this disclosure requirement at any time. Without limiting the foregoing, should VCEA, in the future, decide to consider participation in siting electric project(s), VCEA may at that time, require disclosure of real property interests in which the Committee Member or Affiliate has a direct or indirect interest, that are relevant to the project.

III. Method of Disclosure; Disqualifying Interest

A Qualifying Interest does not automatically disqualify a Committee Member from membership in the Committee or participating in Committee tasks. Rather, the Qualifying Interests must be disclosed as follows:

A. Any applicant to the VCEA Advisory Committee shall disclose any Qualifying Interest that is reasonably foreseeable to the applicant at the time of his/her application. The

Futures Trading Commission of the United States government, except proceeds from the sale of these securities and commodities futures.

(6) Redemption of a mutual fund.

(7) Alimony or child support payments.

(8) Any loan or loans from a commercial lending institution which are made in the lender's regular course of business on terms available to members of the public without regard to official status.

(9) Any loan from or payments received on a loan made to an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, uncle, aunt, or first cousin, or the spouse of any such person, provided that a loan or loan payment received from any such person shall be considered income if he or she is acting as an agent or intermediary for any person not covered by this paragraph.

(10) Any indebtedness created as part of a retail installment or credit card transaction if made in the lender's regular course of business on terms available to members of the public without regard to official status.

(11) Payments received under a defined benefit pension plan qualified under Internal Revenue Code Section 401(a).

(12) Proceeds from the sale of securities registered with the Securities and Exchange Commission of the United States government or from the sale of commodities futures registered with the Commodity Futures Trading Commission of the United States government if the filer sells the securities or the commodities futures on a stock or commodities exchange and does not know or have reason to know the identity of the purchaser.

VECA Board may request additional information from the applicant while considering the applicant.

B. Each Advisory Committee member shall file a Statement of Qualifying Interests within 30 days of appointment and thereafter on an annual basis. The Committee Member shall use the FPPC Form 700 for this disclosure and shall file at the same time as would be required under the PRA and the FPPC Regulations. The Statements shall be filed with the VCEA Clerk and retained by the Clerk. The Statements are available for public review as public records.

C. A Committee Member shall disqualify himself or herself if a Qualifying Interest would require disqualification under the PRA and the FPPC Regulations. The Committee Member shall announce the disqualification and the reason therefor at the Advisory Committee meeting and shall not participate in the matter in which the member has a disqualifying interest, as set forth in the PRA and FPPC Regulations.

D. Ownership of renewable generation facilities such as solar generation (i.e. solar panels) and/or wind turbines for single family dwellings or for up to four-unit multifamily dwellings shall not be considered a Qualifying Interest or an Interest requiring disqualification. Ownership of renewable generation facilities such as solar generation (i.e. solar panels) and/or wind turbines for a business or farming operation (so long as there are no sales of the generated power to third parties other than net metering) shall not be considered a Qualifying Interest; however, such ownership shall require disclosure but not disqualification if the renewable generation facility has a generation capacity of more than 100kW (DC) and the Advisory Committee is considering a recommendation for rates or cost offsets for renewable generation facilities owned by ratepayers.

E. Committee Members are encouraged to confer with the VECA Executive Officer or VECA General Counsel for advice on whether a financial interest is a Qualifying Interest and whether a Qualifying Interest requires disqualification in a matter before the Advisory Committee.

F. Any written advice or recommendation to the VCEA Board shall disclose the Qualifying Interests of all Committee Members participating in the advice or recommendation. Any oral or written presentation on behalf of Committee to the VCEA Board shall include a brief statement disclosing the Qualifying Interests of all Committee Members participating in developing the presentation. Any written advice regarding Qualifying Interests and /or disqualification provided by VCEA legal counsel to a member of the Committee shall be public document.

IV. Failure to Comply with the Policy

A. A Committee Member who has not complied with this Policy must notify the VCEA Board in writing as soon as possible but no later than 30 days after discovering the non-compliance. In addition, any member of the public or consultant or employee of VCEA may notify the VCEA Board of a possible incidence of non-compliance.

B. The VCEA Board should consider the Committee Member's failure to comply, and whether the Committee Member should continue to serve on the Committee.

C. A Committee Member's failure to comply with this Policy shall have no effect on actions taken by the Committee or the VCEA Board, unless either body decides, in its sole discretion, to revisit an item in light of the new information.