

STATE OF CALIFORNIA

STATE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION

IN THE MATTER OF:

**EXECUTIVE DIRECTOR AUTHORITY
TO APPROVE SETTLEMENT
AGREEMENTS FOR OR OTHERWISE
RESOLVE AGREEMENT AUDIT
FINDINGS AND PERFORMANCE
ISSUES**

**(PROPOSED) ORDER AUTHORIZING
EXECUTIVE DIRECTOR ACTION ON
AUDIT FINDINGS AND
PERFORMANCE ISSUES**

The Executive Director and Energy Commission (CEC) staff can already take actions to resolve some issues that arise within CEC contracts, grants, and loans (agreements), including some audit findings. These actions include, but are not limited to, holding critical project reviews, issuing stop work orders, substituting invoiced expenses during the agreement term, executing certain amendments, and requesting repayment for audit findings of definite overbilled amounts.

This Order grants the Executive Director, or his or her designee, the authority to resolve more agreement performance issues, including audit findings, under the following criteria:

1. The matters at issue are not in litigation.
2. The CEC has no evidence of concealment, misrepresentation, or fraud by the funding recipient.
3. Except for item 8 below, the decision is made after consultation with the Audit Committee; Chief Counsel's Office; and for audit findings, the Audits, Investigation, and Program Review Office.
4. Recoupment efforts shall also be:
 - a. Based on a supportable amount; and
 - b. In conformance with, to the extent applicable, State Administrative Manual provisions for creating, collecting, and discharging accounts receivable.

For recoupment efforts, the Executive Director may sign mutual releases and waivers on the CEC's behalf if the proposed release and waiver language adequately protects the CEC and its officers, employee, and agents.

5. A decision not to recoup funds, and if appropriate, mutually terminate an agreement when despite best efforts, an agreement recipient fails to complete the agreement's scope of work, can be made if also:
 - a. The failure to finish the agreement's scope of work is through no fault of the funding recipient; and
 - b. The work actually completed by the funding recipient was done in accordance with agreement requirements.

6. A decision not to recoup funds, even if an agreement recipient does not appear to have used best efforts and fails to meet agreement requirements, can be made if also:
 - a. It is in the best interest of the Commission not to pursue recoupment of funds (e.g., it could cost much more to litigate than likely could be recovered); or
 - b. The amount at issue is not easily or clearly supportable.

7. In agreements that have ended, sometimes agreement recipients propose to substitute un-invoiced agreement costs for invoiced and CEC-reimbursed costs; such a substitution can be approved if also:
 - a. The substituted costs are expenses that would have been allowed to be reimbursed if invoiced during the agreement;
 - b. The substituted costs do not reduce the amount of any match funds required and provided under the agreement.

8. Approval of final invoices that do not match the agreement's budget can be made if also:
 - a. The total of all funds requested for CEC reimbursement do not exceed the CEC reimbursable agreement amount;
 - b. The expenses to be reimbursed are otherwise allowed under the agreement; and
 - c. The agreement recipient has met all of its requirements under the agreement, including the expenditure of any match funds.

CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of an Order duly and regularly adopted at a meeting of the California Energy Commission held on October 14, 2019.

AYE:

NAY:

ABSENT:

ABSTAIN:

Cody Goldthrite
Secretariat