

**Antitrust Guidelines  
for Members and Staff of the California Energy Efficiency Industry Council**

**Introduction:**

One of the major goals of the California Energy Efficiency Industry Council (Efficiency Council) is to create an environment where industry members can meet and share information with the understanding that all such Efficiency Council activities will be conducted in accordance with applicable antitrust laws. The Efficiency Council recognizes that antitrust laws preserve and foster competition and we are committed to a policy that requires strict compliance with both the letter and spirit of these laws. Accordingly, the Efficiency Council has adopted the following Antitrust Guidelines to be used by its members and staff in conducting all Efficiency Council activities.

**Application of Antitrust Laws to Efficiency Council Activities:**

Because of their status as competitors or potential competitors in the same or closely related industries, it is of utmost importance that all members and staff of the Efficiency Council maintain strict compliance with applicable federal and state antitrust laws at all times and avoid engaging in anticompetitive conduct. Violations of antitrust laws carry the risk of severe penalties, including criminal conviction, imprisonment and large monetary fines.

The Efficiency Council understands that its activities are subject to scrutiny under the antitrust laws because it provides a forum where competitors and potential competitors can gather and share information about the way they conduct their business. Therefore, the members and staff of the Efficiency Council must act carefully and cautiously in the way they conduct their activities to ensure they do not create situations that could be construed as violations of antitrust laws.

**Activities Strictly Forbidden by Antitrust Laws:**

In order to avoid violations of antitrust laws, and also to avoid even the appearance of impropriety, Efficiency Council members and staff are strictly prohibited from engaging in any of the following acts, whether in the context of Efficiency Council meetings, discussions, conferences or trade shows, or during informal meetings or discussions before, during or after official Efficiency Council meetings or conferences, regardless of whether the meeting or discussion occurs on a face-to-face basis, via telephone or through electronic communications:

**Price Fixing.** Any agreement among competitors or potential competitors about the price or the elements of pricing that they charge customers can constitute unlawful price fixing. Price fixing may exist even if there is no specific or explicit agreement regarding the price to be charged. Thus, unlawful price-fixing can be found even in the absence of an explicit written or oral agreement to engage in such behavior, where there is suspiciously similar price conduct by Efficiency Council members. In short, any

agreement among competitors that will affect the price to be charged can be deemed impermissible price fixing.

For example, agreements among competitors regarding credit terms, current or future prices, pricing procedures, pricing strategies, determination of profit margins, price changes or freezes, discounts or shipping charges can or will affect the price charged to customers and could therefore be considered anti-competitive in nature and a violation of antitrust laws. Competitors should scrupulously avoid discussing prices or the components of pricing (including costs) and need to be aware that because any agreement affecting pricing can be considered an inherent violation of antitrust laws, those charged with a violation will not be permitted to justify the agreement by showing that it ultimately benefited customers. For that reason, it is generally unlawful to fix prices, even at “low” or “reasonable” levels or for the alleged purpose of protecting or benefiting consumers.

**Bid Rigging.** The object of bid rigging is to reduce competition and ensure that industry members get higher prices and a higher or guaranteed share of the market. The kinds of activities that constitute bid-rigging include, but are not limited to, the following: sharing information with the understanding that one party will be the low bidder; submitting “complementary bids” at the request of a competitor with the understanding that this bid will be higher; and agreeing with a competitor not to bid on a specific project.

**Customer Allocation.** Agreements to divide and allocate customers or markets among various competitors are also deemed to be violations of the antitrust laws. Agreements not to pursue a competitor’s customers, or an agreement not to pursue a category of customer commonly served by a competitor, also fit into the category of unlawful customer allocation schemes.

**Territorial Market Allocation.** Agreements to allocate customers on the basis of the geographic location of the customer or the market are also violations of antitrust laws. Agreements among competitors not to enter markets based on geographical boundaries also fit into this category and are illegal.

**Group Boycotts.** A group boycott exists when competitors agree not to do business with, or agree to take some kind of joint action, such as deny credit, against a competitor or a customer. Such actions are considered to be anti-competitive in nature and in violation of antitrust laws.

**Restricting Efficiency Council Membership.** Actions taken by members of Efficiency Council to deny membership in the Efficiency Council to a competitor or potential competitor can be deemed an unlawful restraint of trade. Such denials could be found in Efficiency Council members’ crafting of membership criteria in a way that unfairly excludes membership to certain entities or that unnecessarily impairs the ability of other entities to become members of the Efficiency Council. It can also be unlawful for Efficiency Council members to restrict or attempt to restrict individuals or businesses from doing business with non-members.

### **Activities with Potential to Result in Violations of Antitrust Laws:**

The following activities have the potential to result in a violation of antitrust laws and, therefore, any Efficiency Council-related activities which involve or give the appearance of involving these activities must be approved in advance by the Efficiency Council's Board Chairman so that the Efficiency Council can engage outside legal counsel to confirm whether the activities are permissible.

**Standard Setting.** Standard setting and development refers to the process of identifying and agreeing upon a specific set of criteria to which a product or service should conform. Standard setting can create antitrust violations if the criteria have an effect of limiting or eliminating certain products, services or competitors from the marketplace. In addition, antitrust violations may occur if the standards that are established are shown to unfairly discriminate against certain members of the industry, especially where the standards or criteria unfairly favor others in the industry. Note that standard setting is a legal activity that can be engaged in provided that it is done in a way that provides all interested parties, on a non-discriminatory and non-preferential basis, with the opportunity to participate in the development and implementation of the standard.

**Information Exchanges.** Sharing non-public information can cause antitrust problems if not structured properly. Information sharing programs must be structured in ways that do not disclose pricing strategies, market share or other areas that could create or provide the inference of creating illegal restraints on trade. In light of this, the following topics may not be discussed among Efficiency Council members at or as part of Efficiency Council meetings, telephone calls, emails, electronic discussions, or other activities:

- Information not publicly available with respect to customers, suppliers, or other competitors;
- Decisions to quote or bid or not to quote or bid on products, components, spare parts, or services;
- Product or service offerings;
- Sales volumes, production capacity or volume;
- Market shares; and
- Non-public investment decisions, research and development spending, or technology.

### **Antitrust Operating Guidelines:**

1. These Antitrust Guidelines will be disseminated to all members in conjunction with their annual membership renewal, and to all Efficiency Council staff.
2. Members failing to adhere to these Antitrust Guidelines shall be subject to corrective and/or disciplinary action, including expulsion from the Efficiency Council.

3. To the maximum extent feasible, agendas will be prepared in advance of all Efficiency Council meetings.
4. Efficiency Council attendees will be reminded at the beginning of Efficiency Council meetings of the existence and general content of these Antitrust Guidelines.
5. The Efficiency Council shall, as the Board Chairman deems appropriate, seek legal counsel when questions arise concerning compliance with antitrust laws.

The Efficiency Council recommends that all of its members develop, implement and vigorously enforce their own internal compliance programs to minimize the possibility of antitrust violations by their employees and other representatives. The Efficiency Council also urges its members to secure competent legal counsel to assist in the development of such compliance programs and to provide guidance and advice in this important area.