STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of: 2022 Load Management Rulemaking	Docket No. 21-OIR-03

CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S COMMENTS ON THE PROPOSED REVISIONS TO THE LOAD MANAGEMENT STANDARDS

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The California Community Choice Association[1] (CalCCA) submits these Comments pursuant to the *Corrected Notice of 15-Day Public Comment Period*, dated April 5, 2022, on the *Proposed Revisions to the Load Management Standards* (the "15-Day Proposed Amendments").

I. INTRODUCTION

CalCCA supports the California Energy Commission's (Commission's) efforts to establish broad load management standards (LMS) that incentivize third-party automation providers to create products to automate demand flexibility. Community choice aggregators (CCAs) are eager to provide load-management tools for their customers and welcome the opportunity to work with the Commission to advance these goals. However, the Commission must only proceed in accordance with its jurisdictional authority, and not overreach to ensure success of its program. The inclusion of CCAs in the proposed LMS oversteps the authority

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1 California Community Choice Association represents the interests of 23 community choice electricity providers in California: Apple Valley Choice Energy, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Orange County Power Authority, Peninsula Clean Energy, Pico Rivera Innovative Municipal Energy, Pioneer Community Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power, San José Clean Energy, Santa Barbara Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean Energy.

granted to the Commission in Public Resources Code (PRC) section 25403.5 and is legally unsustainable.

In addition to the legal prohibition, CalCCA has identified several program "flaws" in the proposed regulations that would create barriers to even voluntary CCA participation. One such flaw, the inclusion of CCAs in the definition of "Utility," was adequately addressed by the Commission in the 15-Day Proposed Amendments. However, several other flaws remain in the proposed language, including that:

- CCAs cannot implement an hourly locational marginal cost-based rate until the investor-owned utilities (IOU) develop the data and billing systems to incorporate such a rate;
- The Commission's finding that CCA costs to implement the LMS are negligible is unsubstantiated; and
- The Commission has arbitrarily excluded electric service providers (ESPs) and small publicly-owned utilities (POUs) among the entities subject to the LMS and must modify the proposal to apply the standards consistently.

II. THE COMMISSION DOES NOT HAVE JURISDICTION TO MANDATE CCA COMPLIANCE WITH ITS LOAD MANAGEMENT STANDARDS

The 15-Day Proposed Amendments does not address CalCCA's continuing assertion, in both written comments and in conversations with Commission staff, that the Commission does <u>not</u> have jurisdictional authority to mandate CCA compliance with the LMS.[2] The LMS are established pursuant to PRC section 25403.5, which provides jurisdiction to the Commission to "adopt standards by regulation for a program of electrical load management for each utility service area."[3] Included within the "techniques" for load management are "[a]djustments in rate

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[2] *See*, *Comments of the California Community Choice Association to the California Energy Commission on the Draft Staff Report*, Docket Log (DL) 19-OIR-01 (June 4, 2021) (CalCCA June 4, 2021 Comments); *California Community Choice Association's Comments on the Proposed Amendments to the Load Management Standards Contained in the California Code of Regulations, Title 20*, DL 21-OIR-03 (Feb. 7, 2022) (CalCCA Feb. 7, 2022 Comments).

[3] Cal. Pub. Res. Code § 25403.5.

structure to encourage use of electrical energy at off-peak hours or to encourage control of daily electrical load."[4] A "service area" is defined in the PRC as "any contiguous geographic area serviced by the same electric utility."[5] As recognized by the Commission's 15-Day Proposed Amendments removing CCAs from the definition of "Utility," CCAs are not "electric utilities." Instead, the Commission contends that because CCAs operate within the geographical service territories of electric utilities, the LMS apply to CCAs that provide electricity to customers within these service territories.[6]

As CalCCA has explained in detail, the proposed LMS overstep the Commission's jurisdictional boundaries.[7] Specifically:

- PRC section 25403.5 has never been amended to expressly apply to or include CCAs within the LMS, despite the legislature imposing obligations on CCAs in other PRC sections; [8]

- The Amendments unlawfully sweep CCAs into the load management standards generally, and step squarely into the ratemaking arena, requiring CCAs to implement a very specific rate methodology;[9]

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4 *Id.,* § 25403.5(a)(1).

5 *Id.,* § 25118.

6 Final Staff Report at 17.

7 *See* CalCCA June 4, 2021 Comments; CalCCA Feb. 7, 2022 Comments.

8 PRC section 25403.5 was originally enacted to require a utility to certify that it was in compliance with the LMS before the Commission would approve sites for a new power plant to effectively coordinate new capacity with load needs. Cal. Pub. Res. Code § 25403.5(e) (1976) (amended in 1980 through AB 3062 (stats. 1980) to eliminate a penalty clause, and to add a forecast reporting requirement for electric utilities). Senate Bill (SB) 1389 (stats. 2002) shifted forecast reporting requirements to the Integrated Energy Policy Report (IEPR). Notably, the direction for electric utilities to report on load management standards was eliminated, but PRC section 25302.5(a) did allow the Commission to require in the IEPR "submission of demand forecasts, resource plans, market assessments, and related outlooks from electric . . . utilities, . . . and other market participants," including CCAs. Therefore, the IEPR process established in 2002 expressly includes CCAs, but the load management standards (adopted before the creation of CCAs) were never amended to include CCAs.

9 *See* Proposed LMS Regulations, § 1623(a) (requiring utilities and CCAs to develop "marginal cost-based rates," calculated as "the sum of the marginal energy cost, the marginal capacity cost (generation, transmission, and distribution), and any other appropriate time and location dependent marginal costs, including social costs, on a time interval of no more than one hour. Energy cost computations shall reflect locational marginal pricing as determined by the associated balancing

- The Commission's mandate of a specific rate methodology in the LMS infringes on CCA governing boards' exclusive ratemaking approval authority established in 2002 by Assembly Bill (AB) 117;[10]
- The Final Staff Report acknowledges that the Commission does not have rate approval authority over CCAs;[11] and
- The LMS unlawfully provides the Commission, and not CCA governing boards, the right to impose injunctive relief or impose penalties on CCAs that do not comply with the LMS.[12]

CCAs share the goals of facilitating load management activities by consumers that reduce peak electricity demand, helping to balance electricity supply and demand to support grid reliability and providing clean and affordable electricity services to Californians. However, the Commission does not have the authority to mandate CCA compliance with the LMS. To resolve the Commission's jurisdictional overreach, including the unlawful infringement on CCA rate autonomy and operations, the Commission should revise the 15-Day Proposed Amendments to apply the LMS regulations, including the marginal cost rate requirements, to CCAs on a *voluntary basis.*

authority, such as the California Independent System Operator, the Balancing Authority of Northern California, or other balancing authority. Marginal cost computations shall reflect variations in the probability and value of system reliability of each component (generation, transmission, and distribution). Social cost computations shall reflect, at a minimum, the locational marginal cost of associated greenhouse gas emissions.").

10 AB 117, Stats. 2002; ch. 838 (codified at Cal. Pub. Util. Code § 366.2(c)(3)).

11 Final Staff Report at 17 ("[s]pecific to rate structure, the CEC does not have exclusive or independent authority. For example, rates proposed in compliance with the load management standards are subject to approval by . . . CCA governing boards . . . .").

12 *See* Proposed LMS Regulations, § 1623(a) ("[t]his standard requires that each . . . CCA develop marginal cost-based rates structured according to the requirements of this article and that the . . . CCA submit such rates to its rate-approving body for approval"); § 1621(f) ("[t]he Executive Director may, after reviewing the matter with the . . . CCA, file a complaint with the Commission . . . or seek injunctive relief if a . . . CCA: (1) fails to adhere to its approved load management standard plan, . . . or (5) violates the provisions of this article.").

III. OTHER FLAWS IN THE LMS CREATE BARRIERS TO EVEN VOLUNTARY CCA PARTICIPATION

A. The 15-Day Proposed Amendments Adequately Address CalCCA's Request to Remove CCAs From the Definition of "Utility" and Limit LMS Application to Sections 1621 and 1623

The 15-Day Proposed Amendments remedy one "flaw" CalCCA has identified in comments by removing CCAs from the definition of "Utility."[13] The regulations as originally proposed would have effectively incorporated CCAs into all existing load management standards including sections 1622 (residential electric water heaters and air conditioners), 1624 (swimming pool filter pumps, and 1625 (non-residential load management standard). In addition, the expanded definition of "Utility" to include CCAs would have set a precedent for any future regulations promulgated under the CEC's load management authority. The 15-Day Proposed Amendments remedy these concerns by: (1) modifying section 1621(b) to explicitly state that CCAs are not subject subsections 1622, 1624, and 1625 of Article 5; and (2) removing CCAs from the definition of "Utility" in section 1621(c)(17). In addition, the 15-Day Proposed Amendments modify sections 1621 and 1623 to incorporate the changes to the application of the regulations and the definition of "Utility."

In addition, while CalCCA does not agree with section 1621(b)'s statement that the standards are "technologically feasible and cost-effective" (as explained in more detail below), to remain consistent with the other sections removing CCAs from the definition of "Utility," the Commission should change the word "including" in the last sentence of the section to "and":

> The Commission has found these standards to be technologically feasible and cost-effective when compared with the costs for new electrical capacity for the above-named electric utilities, ~~including~~<u>and</u> CCAs operating within the service areas of such electric utilities.

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13 *See* CalCCA June 4, 2021 Comments at 2-3; CalCCA Feb. 7, 2022 Comments at 10-11.

With this minor change, the 15-Day Proposed Amendments resolve CalCCA's objection to including CCAs in the definition of "Utility."

B. CCAs Cannot Implement an Hourly Locational Marginal Cost-Based Rate Until the IOUs Develop the Data and Billing Systems to Incorporate That Rate

Despite the 15-Day Proposed Amendments' fix of the definitional issues, they overlook an issue of timing. The LMS requires marginal cost-based rates for all rate elements – transmission, distribution, and generation. For CCA customers, their bills will combine the IOU's marginal cost rate for distribution and transmission with the CCA's marginal cost rate for generation. Requiring CCAs and IOUs to develop rates contemporaneously for all three elements risks a disconnection between the marginal rates for different rate elements. Asking CCAs to develop and implement rates only once the IOUs have approved transmission and distribution components would enable load-serving entities (LSE) to align the approach for all three elements.

A sequential development of rates – transmission/distribution followed by generation – also addresses another problem. Currently, the data received from the IOUs contains significant gaps that do not allow for the receipt of real-time access to interval data to view CCA load. In addition, because IOUs bill the customers after receiving the generation component from CCAs, the IOUs cannot bill for the rate until they develop the appropriate billing systems. As noted in Southern California Edison Company's (SCE) February 7, 2002 comments, the timeframe for SCE to develop the framework for rolling out real-time pricing for one class of customers to align "with SCE's current IT and billing infrastructure" is eight years.[14] As SCE notes, "[a]ppropriate time is needed to ensure success with executing this framework and the

14 *Southern California Edison's Comments on the California Energy Commission (CEC) Docket No. 21-OIR-03, Southern California Edison (SCE) Written Comments on Proposed Regulatory Language for the Load Management Standards Regulations* (Feb. 7, 2022), at 1-2.

accompanying regulatory decision-making process."[15] CCAs can only implement such a rate after the IOUs complete their IT and billing infrastructure upgrades to handle such a rate. Therefore, from a technical feasibility perspective, implementation by CCAs of the rate prescribed in the LMS regulations is many years off and will depend on the IOU implementation of their rates through upgrades to their data and billing systems.[16]

C. The Finding That CCA Costs to Implement the LMS are Negligible is Unsubstantiated

The Commission's statements regarding the costs associated with incorporating CCAs into the LMS are unsubstantiated. Section 1622(h) of the 15-Day Proposed Amendments states that:

> There shall be no reimbursement to local government entities for the costs of carrying out the programs mandated by these standards, because the Commission has found these standards to be cost-effective. The savings which these entities will realize as a result of carrying out these programs will outweigh the costs associated with implementing these programs.[17]

The CEC's assumption that the rates developed pursuant to the LMS will be "cost-effective" for CCAs is not supported by the record. In fact, the Final Staff Report includes the fiscal impact for Publicly-Owned Utilities (POUs) as local governmental entities, but not CCAs.[18] Given the complexity and data-driven nature of the rate prescribed in the LMS, however, there will be significant costs associated with developing a proposal to present to a CCA board. Once presented, the Board may not adopt the proposal. In such a case, there is no way to recover the

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15 *Id.* at 2.

16 In addition, in the event CCAs can voluntarily comply with the LMS, the Commission should ensure that the rate structure, including the definition of marginal cost-based rates, is not overly prescriptive in nature and allows for innovation in rate design. CCAs and other LSEs should maintain flexibility to create innovative and cost-effective rates that reflect their specific marginal costs and customer needs.

17 15-Day Proposed Amendments § 1622(h).

18 Final Staff Report at 77-78 (Tables 15-16).

costs for developing the proposal. The CEC's fiscal impact analysis also failed to account for the significant implementation costs associated with billing system upgrades. These costs would be especially more burdensome for smaller CCAs, whose load shares are more comparable to smaller POUs. The Commission has therefore not properly evaluated the cost-effectiveness of developing these rates for CCAs.

As the Commission has not adequately substantiated its claims that the implementation of the LMS would be cost effective for CCAs, the Commission should also clarify that section 1622(h) of the proposed LMS does not expressly preclude CCAs from seeking cost recovery from all ratepayers for implementation of the LMS with the California Public Utilities Commission. As CCAs would be developing their own marginal cost-based generation rates, there would necessarily be costs to develop the rates and infrastructure necessary to implement and bill for such rates. If the IOUs and CCAs are both developing these systems, attention must be paid to the cost recovery mechanisms of both the IOUs *and* CCAs to ensure that customers are not paying twice for the implementation of the LMS. Any determination of the reasonableness of cost recovery mechanisms must not be prejudiced by the language adopted in the LMS.

In addition, the Final Staff Report states that:

> [t]he CEC assumes that CCAs in IOU service territories will pass through the hourly tariffs that are developed and implemented by the IOU in whose service territory they are located. This implementation strategy is projected to result in no direct costs or benefits for the CCAs but will be most aligned with grid needs. CCAs' customers will benefit from energy costs reduction. CCAs' reporting effort is expected to be negligible as CCAs only need to inform CEC about the hourly tariffs they pass through from their respective IOU.[19]

[19] *Id.* at 78.

CCAs do not "pass through" rates from the IOUs. CCAs have their own generation rates, developed by the CCAs and approved by the CCA governing boards. CCA rates compete with IOU generation rates. CCAs provide their generation rates to the IOUs, who bill CCA customers by adding their transmission and distribution rates. CCA rate design requires significant effort and cost, similar to IOU rate design. Further, the regulations describe rates that are approved by a CCA's governing board. However, CCA governing boards have no authority to approve IOU rates. The CCAs cannot simply rely on IOU rates to comply with the plain language of the regulation.

IV. THE COMMISSION HAS INCLUDED CCAS WHILE ARBITRARILY EXCLUDING ESPS AND SMALL POUS FROM THE LMS

The proposed regulations apply to the IOUs, specific large POUs, and all CCAs.[20] Curiously absent from the list of LSEs required to comply with the LMS are ESPs and small POUs. CalCCA questions why the Commission excluded ESPs when they served ten percent of California's load in 2021.[21] Small POUs together also serve a substantial portion of California's load. The Final Staff Report states that part of the reason it includes CCAs within the reach of its LMS is because "any other interpretation would diminish the effectiveness of the proposed amendments to the [LMS] and defeat the purpose of the statute."[22] The same can be said of ESPs and small POUs. The proposed regulations' exclusion of ESPs and small POUs may be interpreted as an arbitrary and capricious omission that should be explained. The Commission must apply the LMS even-handedly among all LSEs operating in the same service area to ensure consistency and competitiveness.

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20 Proposed Amendments § 1621(b).
21 *California Energy Demand 2021-2035 Baseline Forecast - Mid Demand Case*, January 2022.
22 Final Staff Report at 17.

V. CONCLUSION

CalCCA looks forward to further collaboration on this topic.

Respectfully submitted,

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