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on the Proposed Amendments to the Load Management Standards

Additional submitted attachment is included below.

STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:	
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CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S COMMENTS ON THE PROPOSED AMENDMENTS TO THE LOAD MANAGEMENT STANDARDS, CALIFORNIA CODE OF REGULATIONS, TITLE 20 (NOTICE OF THIRD 15-DAY PUBLIC COMMENT PERIOD)

Evelyn Kahl
General Counsel and Director of Policy
Leanne Bober
Senior Counsel
CALIFORNIA COMMUNITY CHOICE ASSOCIATION
One Concord Center
2300 Clayton Road, Suite 1150
Concord, CA 94520
(415) 254-5454
regulatory@cal-cca.org

September 27, 2022

STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

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The California Community Choice Association[1] (CalCCA) submit these Comments pursuant to the *Notice of Proposed Action (NOPA) With Proposed Amendments to the Load Management Standards (LMS), California Code of Regulations (CCR), Title 20, Division 2, Chapter 4, Article 5*, dated December 24, 2021, and *Notice of Third 15-Day Public Period* (Third Notice), dated September 12, 2022.

I. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

CalCCA appreciates the continued efforts of the California Energy Commission (Commission) to address stakeholder concerns with the proposed load management standards (LMS). Revisions to the LMS Regulations in the Third Notice that impact CCAs include: (1) limiting the application of the regulations to "Large CCAs"; (2) allowing CCAs to first seek

[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.

approval of their compliance plans, rates and programs from their rate-approving bodies; (3) continuing to require the development and request for approval from CCA rate-approving bodies of the prescribed marginal cost rates, despite allowing CCAs to seek approval from the Commission of rates *or* programs enabling automated response to marginal cost signals; and (4) providing additional time for LMS compliance for CCAs.

The revised regulations, as well as all prior revisions, fail to remedy the jurisdictional overreach by the Commission *mandating* that CCAs comply with the LMS. As set forth in CalCCA's prior comments, the core jurisdictional problem is clear – the Commission has no explicit or implicit authority under the LMS implementing statute, California Public Resources Code section 25403.5, or any other statute, to require CCA participation in the LMS.[2] In addition, the LMS, even as revised, infringes on CCA rate autonomy.[3] Given these issues, the Commission should either remove CCAs from the application of the LMS regulations, or make CCA participation voluntary.

II. THE PROPOSED CHANGES DO NOT REMEDY THE COMMISSION'S JURISDICTIONAL OVERREACH AND INFRINGE ON CCA RATE AUTONOMY

This third round of revisions to the proposed LMS regulations continue to fail to remedy the Commission's jurisdictional overreach and infringement on CCA rate autonomy. As set forth below, the proposed changes: (1) fail to remedy the jurisdictional overreach by restricting

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[2] *See Comments of the California Community Choice Association to the California Energy Commission on the Draft Staff Report,* Docket 19-OIR-01 (June 4, 2021); *California Community Choice Association's Comments on the Proposed Amendments to the Load Management Standards Contained in the California Code of Regulations, Title 20,* Docket 21-OIR-03 (Feb. 7, 2022); *California Community Choice Association's Comments on the Proposed Revisions to the Load Management Standards,* Docket 21-OIR-03 (Apr. 20, 2022); *California Community Choice Association's Comments on the Proposed Revisions to the Load Management Standards (Notice of Second 15-Day Public Comment Period),* Docket 21-OIR-03 (July 21, 2022).

[3] *See id.*

the application of the regulations to "Large CCAs"; (2) do not alter the Commission's ultimate enforcement authority by allowing CCAs to first seek approval of their compliance plans, or rates and programs, from their rate-approving bodies; and (3) continue to infringe on CCA rate autonomy by requiring the *development of and application to CCA rate-approving bodies for* a prescriptive marginal cost rate, even if the CCA ultimately seeks from the Commission approval of a program instead of a rate.

A. Restricting the Application of the Regulations to "Large CCAs" Does Not Remedy the Commission's Jurisdictional Overreach

Limiting the application of the regulations to "Large CCAs," or CCAs that provide in excess of 700 gigawatt-hours of electricity to customers in any calendar year, does not remedy the Commission's jurisdictional overreach or infringement on CCA rate autonomy. In fact, most CCAs will still fall within the application of the LMS regulations, despite the Commission's lack of statutory jurisdiction to require CCA participation. As a result, the revision to restrict the application of the LMS to "Large CCAs" fails to remedy the overreach by the Commission.

B. The Commission Retains Ultimate Enforcement Authority Even Though the Revised Regulations Allow CCAs to Seek Initial Approval from Their Rate-Approving Bodies of Compliance Plan and Rates/Programs

Despite the revision of the "compliance path" to allow CCAs to seek approval of their plans, rates and programs from their rate-approving body prior to seeking approval from the Commission, the Commission's ultimate enforcement authority over all parts of the LMS regulations remains intact in section 1623.1(d). Therefore, even if a CCA rate-approving body approves a plan, rate or program, the Commission retains authority to require changes, and the Commission's Executive Director retains the ability to file a complaint for non-compliance with

the Commission, or to seek injunctive relief.[4] In all cases, the Commission oversteps its jurisdictional authority and infringes upon the rate autonomy of CCA rate-approving bodies.

C. The Revised Regulations Continue to Infringe on CCA Rate Autonomy by Requiring the Development and Application to CCA Rate-Approving Bodies of a Prescriptive Marginal Cost Rate

The revised LMS regulations continue to infringe on CCA rate autonomy as set forth in CalCCA's previous comments. The revisions will allow CCAs to offer either marginal cost rates *or* programs to achieve the goals of the LMS.[5] However, section 1623.1(b)(2) still mandates that:

> Within . . . twenty-seven (27) months of the effective date of these regulations each Large CCA, *shall apply* to its rate-approving body for approval of at least one marginal cost-based rate, that meets the requirements of Subsection 1623.1(b)(1).[6]

Therefore, CCAs can now *offer* an approved rate *or* program to its customers within fifty-one (51) months of the regulations. However, Large CCAs must still *develop and apply for* approval from its rate approving body of the prescriptive marginal cost-based rate described in section 1623.1(b)(1). Therefore, the revised regulations continue to infringe on the rate authority of CCAs by requiring CCAs to develop and request approval for a rate design prescribed by the Commission.

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[4] Third Revised LMS Regulations, § 1623.1(d).

[5] Section 1621 requires entities subject to the LMS offer rates *or programs.* In addition, section 1623.1(a)(1)(A) requires a plan to be submitted within one year of the effective date of the regulations, approved by the CCA rate approving body, and then submitted to the Commission for approval. The plan shall "evaluate cost effectiveness, equity, technological feasibility, benefits to the grid, and benefits to customers of marginal cost-based rates for each customer class." If, after consideration of these factors, a CCA's plan does not propose development of marginal cost-based rates, section 1623.1(a)(1)(B) requires the plan to "propose *programs* that enable automated response to marginal cost signal(s) for each customer class and evaluate them based on their cost-effectiveness, equity, technological feasibility, benefits to the grid, and benefits to customers." (Emphasis supplied)

[6] *Id.,* § 1623.1(b)(2) (emphasis supplied).

III. LENGTHENING THE TIME FOR CCA COMPLIANCE PROVIDES FLEXIBILITY IN THE EVENT A CCA VOLUNTARILY PARTICIPATES IN THE LMS

While for the reasons set forth above and in CalCCA's previous comments the Commission cannot require CCA participation in the LMS program, the revisions providing additional time for CCAs to comply will provide flexibility in the event a CCA decides to voluntarily participate. As explained in prior CalCCA comments, CCAs cannot implement an hourly locational marginal cost-based rate until the IOUs develop the data and billing systems to incorporate the CCA rate. Therefore, delaying CCA participation until after the IOUs develop their own rates and programs will allow the appropriate systems to be in place to ensure that CCAs can actually implement the LMS provisions *if they choose to do so*.

IV. CONCLUSION

For the reasons set forth herein and in CalCCA's previous comments in this proceeding, CalCCA requests that CCAs be removed from the application of the LMS regulations due to the Commission's lack of jurisdiction to mandate CCA participation. In the alternative, the Commission should make CCA participation voluntary. CalCCA appreciates Commission Staff's efforts in Docket 21-OIR-03 and looks forward to further collaboration on this topic.

Respectfully submitted,

Evelyn Kahl
General Counsel and Director of Policy
CALIFORNIA COMMUNITY CHOICE ASSOCIATION

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