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Additional submitted attachment is included below.

BEFORE THE CALIFORNIA ENERGY COMMISSION

In the Matter of:

*2017 Integrated Energy Policy Report and
Integrated Resource Plans
(Publicly Owned Utilities)*

Docket No. 17-IEPR-07

RE: IRP Renewable Energy

**CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION COMMENTS
ON IEPR STAFF WEBINAR ON INPUTS, ASSUMPTIONS, AND ADMINISTRATIVE
REVIEW FOR PUBLICLY OWNED UTILITY INTEGRATED RESOURCE PLANS**

The California Municipal Utilities Association (“CMUA”) appreciates the opportunity to provide these comments to the California Energy Commission (“Commission”) on the *IEPR Staff Webinar on Inputs, Assumptions, and Administrative Review for Publicly Owned Utility Integrated Resource Plans* (“Webinar”), held on April 20, 2017 and the associated staff paper titled *POU IRP Guidelines Development: Administration, Review Process, and Reporting* (“Staff Paper”). CMUA is grateful for Commission Staff’s work in this proceeding and continued outreach to the publicly owned electric utilities (“POUs”). In these comments, CMUA highlights a few key concerns and recommendations for the Commission Guidelines. Both the Northern California Power Agency (“NCPA”), the Southern California Public Power Authority (“SCPPA”), as well as several individual POUs will file separate comments on the Webinar and Staff Paper. CMUA supports those filings and urges the Commission to carefully consider those comments.

1. The Commission Must Ensure that Its Review and Recommendation Process Does Not Infringe on the Rate-Making Authority of POU Governing Boards.

Maintaining autonomy and local control over ratemaking is one of the highest principles for POUs. POU rates are set by locally elected governing boards in a public process with direct involvement from the community. Any restriction or limitation on this POU ratemaking authority infringes on the rights of the POU customers to shape not only their own rates, but also the broader

policies and goals of their utility. In contrast, the rates of the investor owned utilities (“IOU”) are set in proceedings before the California Public Utilities Commission (“CPUC”). Since POU rates are set at the local level, POU ratepayers tend to participate more actively in ratemaking proceedings than IOU customers.

In recognition of the differing process and oversight between POU and IOU ratemaking, the relevant statutory direction on electric rates is fundamentally different. IOU rates are subject to Public Utilities Code¹ Section 451, which specifies:

All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered **shall be just and reasonable**. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful. . . .

There are no such restrictions on the electric retail rates set by POU Governing Boards.² The courts have also acknowledged and affirmed these differences between IOUs and POUs:

Because rate fixing is a legislative function within the exclusive province of the municipality, the courts will intrude only in the limited case where the rates are shown to be unreasonable, unfair, or fraudulently or arbitrarily established. [] There is a presumption that government officials have properly performed their duties. [] Thus, the burden rests with the ratepayers to show that the utility rates are unreasonable, arbitrary or discriminatory. . . .

Under organic and statutory law, *privately*-owned utility companies are subject to regulation by the Public Utilities Commission (P.U.C.), a regulatory agency invested by the Legislature with the exclusive power to set utility rates which are “just and reasonable” []. In setting utility rates, the P.U.C. employs two basic factors: 1) the utility's operating expenses or cost of service and 2) a fair return on the utility's investment. [] The P.U.C. will not allow the utility to pass unreasonable expenses onto the ratepayers. . . .

In contrast, *publicly*-owned municipal utilities are not regulated by the P.U.C. or any other supervising agency [] in the absence of a legislative grant of authority [].

¹ Unless specified otherwise, all subsequent statutory references refer to the Public Utilities Code.

² For example, the Municipal Utilities District Act only specifies the following: “The rates and charges for commodities or service furnished by a district **shall be fixed by the board**. As far as possible utilities shall be self-supporting but the board is not required to fix a rate which in its opinion is unreasonably high, nor to cover by rates large expenditures and the interest thereon required for future needs and developments.” Cal. Pub. Util. Code § 21809 (emphasis added).

Thus, it is the public entity itself which fixes utility rates pursuant to its independent legislative power.³

In light of the long-standing statutory differences and case law, it is clear that the exclusive authority of POU Governing Boards to set their own rates is a settled principle of law. Courts have provided direction on how to interpret statutes that have the potential to infringe on long-settled principles of law:

The courts will not presume ‘that the legislature in the enactment of statutes intends to overthrow long-established principles of law **unless such intention is made clearly to appear either by express declaration or by necessary implication**’ []; instead it will be presumed that the legislature took such principles for granted rather than sought to alter them in omitting any specific provision for their application []; and where uncertainty exists consideration may be given to the consequences that will flow from a particular interpretation.⁴

With this direction in mind, the Commission must interpret any provisions of Section 9621 in a manner that does not conflict with or limit POU Governing Board rate-setting authority. Section 454.52(a)(1)(C) directs the CPUC to adopt an integrated resource plan (“IRP”) process that enables each IOU “to fulfill its obligation to serve its customers at just and reasonable rates.” Section 9621(b)(3) directs the governing board of a POU to adopt an IRP that meets the goal specified in Section 454.52(a)(1)(C) “**as that goal is applicable to each local publicly owned electric utility.**”⁵ Section 9621(b)(3) goes on to state: “A local publicly owned electric utility shall not, solely by reason of this paragraph, be subject to requirements otherwise imposed on electrical corporations.”

The IOU obligation to serve customers at just and reasonable rates is a direct reference to the requirement specified in Section 451, which is copied above. Section 9621 expressly states that a POU’s obligation to meet this specific goal is limited “to the extent that goal is applicable” to

³ Am. Microsystems, Inc. v. City of Santa Clara, 137 Cal. App. 3d 1037, 1042–43 (1982) (internal citations omitted) (emphasis added).

⁴ Jaynes v. Stockton, 193 Cal. App. 2d 47, 56 (1961) (internal citations omitted) (emphasis added).

⁵ (emphasis added).

each POU. Further, Section 9621 clarifies that this specific provision does not create any new or standalone obligation for POUs. As described above, Section 451 does not apply to POUs.

Additionally, adding a new statutory obligation limiting POU ratemaking authority would overturn long-settled law and policy. Had the Legislature intended to effect such a change, it would have done so in express and unambiguous language.

Therefore, a POU Governing Board has no obligation to make any demonstration or justification of its rates in the same manner as the IOUs. Because rate-setting is within the exclusive jurisdiction of the POU governing boards, those entities should determine what discussions relevant to rates should be included in their IRPs.

The Commission's direction under Section 9622 to review POU IRPs for inconsistencies with Section 9621 and to provide recommendations to correct deficiencies does not apply to reviewing the reasonableness of the POU's rates, which is solely within the authority of the POU governing board. As stated above, POU governing boards do not have any new or independent obligation to provide justifications for their rates pursuant to Section 9621 and therefore, the Commission could not identify a deficiency related to POU rates. Further, an interpretation of Section 9621 and 9622 that would give the Commission any level of oversight over POU ratemaking authority would be counter to well-settled and long-standing law and policy. Such a dramatic change cannot be implied from the limited language in Sections 9621 and 9622. Consistent with this limitation, the Commission Guidelines should not direct POUs to submit any rate analysis data to the Commission or justifications for how POU rates relate to achieving policy goals.

2. THE COMMISSION'S IRP GUIDELINES SHOULD NOT INCLUDE A FORMAL APPEAL PROCESS.

The Staff Paper proposes an appeal process for IRPs that are found to be deficient.⁶ The proposed process would involve an initial petition to the Executive Director for reconsideration of a Commission determination. If that petition is denied, the POU could then appeal to the Commission Chair. CMUA appreciates the desire of Commission Staff to create a robust process for resolving disputes related to the IRPs. However, a formal appeal process is inconsistent with the intent and overall purpose of the POU's IRPs and is unlikely to be of use considering the disputes that could arise.

First, the IRP is a planning exercise that will evaluate future resource needs in light of current mandates and policy goals. A utility's actual performance over this IRP timeframe will differ due to deviations from the forecasted load and generation. A POU could deviate from IRP targets due to factors completely outside of its control, such as an extended drought, a loss of a generating facility, or the failure of a planned project. A formal appeal process does not make sense in the context of such a forward-looking planning document.

Unlike the Renewables Portfolio Standard Program ("RPS"), the IRP has no enforceable compliance requirement. Due to the potential financial consequences of a Commission determination of RPS compliance, a formal appeal process for the RPS is absolutely necessary. In contrast, if the Commission finds a POU IRP to be deficient, the Commission provides recommendations. A formal appeal process to overturn recommendations would be unnecessary and a poor use of Commission resources.

Further, if the Commission does find a deficiency it is most likely that it will relate to a missing element or lack of data rather than a fundamental disagreement on a factual matter. These

⁶ Staff Paper at 2.

types of missing information deficiencies should be resolved through informal coordination between the POU's and Commission Staff. Rather than appeal, the POU would simply provide the missing information or provide an explanation for its exclusion. If, alternatively, the Commission determined that an IRP was deficient because the POU's IRP does not ensure that it will meet its 2030 RPS or GHG reduction goals, then it is likely that the cause is a disagreement that relates to the modeling and projections of future load and generation scenarios. Such a disagreement over technical issues is unlikely to be resolved through a formal appeal process.

Instead, CMUA recommends that the Commission develop an optional informal review process where POU staff can coordinate with Commission staff throughout their IRP development process. This type of coordination would allow POU's to address potential concerns at a more appropriate time, prior to the adoption of the IRP by the POU's governing board.

3. THE COMMISSION SHOULD ENCOURAGE STAKEHOLDER PARTICIPATION IN THE INDIVIDUAL POU IRP DEVELOPMENT PROCESSES RATHER THAN DURING THE COMMISSION REVIEW.

The Staff Paper proposes that POU IRPs will be posted to the Commission's website at which time public comments will be allowed.⁷ The Staff Paper notes that public comments may be considered as part of the review for consistency. CMUA is concerned that this structure may encourage stakeholder groups to raise wide-ranging concerns with POU IRPs for the first time during this public comment period. The challenge that this presents is that, by this stage in the process, the POU will have already completed its own individual public process where members of its community have provided input and the POU's locally elected governing board has approved the IRP. Raising concerns after the completion of the POU process will not only limit the POU's ability to respond to these concerns, but it also deprives the POU customers of their opportunity provide input on these issues because individual customers and local community groups are

⁷ Staff Paper at 2.

unlikely to directly engage in the Commission's proceeding.

The Commission should encourage and help facilitate stakeholder participation in the individual POU IRP processes so that the problems identified above can be avoided. The POU's can coordinate with Commission Staff to determine the best way to facilitate this participation.

4. CONCLUSION

CMUA appreciates the opportunity to provide these comments to the Commission.

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Respectfully submitted,



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