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**CMUA Comment Letter on 15-Day Express Terms**

*Additional submitted attachment is included below.*

STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:

2022 Energy Code Update Rulemaking

Docket No. 21-BSTD-01

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**COMMENTS OF THE CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION  
ON THE 15-DAY EXPRESS TERMS 2022 ENERGY CODE - RESIDENTIAL AND  
NONRESIDENTIAL**

The California Municipal Utilities Association (CMUA) respectfully provides the following comments to the California Energy Resources Conservation and Development Commission (Energy Commission) regarding the 15-Day Express Terms 2022 Energy Code – Residential and Nonresidential (15-Day Express Terms).<sup>1</sup>

CMUA is a statewide organization of local public agencies in California that provide electricity and water service to California consumers. CMUA membership includes publicly owned electric utilities (POUs) that operate electricity generation and distribution and transmission systems. In total, CMUA members serve approximately 25 percent of the electric load in California. California’s POU’s are committed to, and have a strong track record of, providing safe, reliable, affordable, and sustainable electric service.

**I. INTRODUCTION**

CMUA supports California’s Community Shared Solar (CSS) program as established in California’s 2019 Building Standards.<sup>2</sup> The CSS program provides an important mechanism that increases the means by which California can achieve its renewable energy goals. Additionally,

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<sup>1</sup> Energy Commission Docket #21-BSTD-01, Document #238848, <https://efiling.energy.ca.gov/GetDocument.aspx?tn=238848&DocumentContentId=72256>

<sup>2</sup> 24 Cal. Code Regs. (CCR) § 10-115 and CCR § 150.1(b)(1).

the CSS program provides an important compliance option for consumers who may not be best served by rooftop photovoltaic (PV). The CSS program can also provide a relatively lower cost method for California's lower income home buyers to directly support solar energy for their homes. On June 21, 2021, CMUA submitted comments opposing changes proposed to the CSS set forth in the 45-Day Express Terms.<sup>3</sup>

While CMUA supports some of the language in the 15-Day Express Terms clarifying the process required for a building owner to Opt-Out, we remain concerned that the Opt-Out process, as described, will reduce the likelihood that builders, electric utilities, or other groups will provide this important compliance option. The impact of such a result will be disproportionately imposed on lower income home buyers. For the reasons addressed below, CMUA urges the Commission to revise the proposed changes to the CSS to avoid this inequitable outcome.

## **II. COMMENTS**

### **A. An unlimited Opt-Out increases risk and imposes risk-related costs on project administrators.**

CMUA appreciates that the Energy Commission has made clear that, "(p)rior to Opt-Out, the building owner must demonstrate that it has installed an on-site solar electric generation system and met the Opt-Out Requirements by providing documentation from the installer of the on-site solar system or an attestation of the building owner with supporting documentation".<sup>4</sup> CMUA further recognizes that the Energy Commission has made clear that "(t)he building owner shall be responsible for all costs associated with documenting that the onsite solar generation system satisfies the Opt-Out Requirements".<sup>5</sup> However, the 15-Day Express Terms

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<sup>3</sup> Energy Commission Docket #21-BSTD-01, Document #237717, <https://efiling.energy.ca.gov/GetDocument.aspx?tn=237717&DocumentContentId=70942>

<sup>4</sup> 15-Day Express Terms, p. 47.

<sup>5</sup> *Id.* p. 48.

also state that the project administrator shall not impose any penalty related to a participating building's Opt-Out, or charge participants any unrealized revenue due to the building owner's Opt-Out.<sup>6</sup> If this language remains, it will not only require that a CSS project administrator assume all risk of project performance, it will allow a building owner to avoid costs it imposed upon CSS administrator when opting out of a long-term project agreement.

While administering a CSS project will become more complicated if a building owner opts out, this asymmetric risk approach, in which a building owner can legally avoid costs it imposes when opting out, further reduces the likelihood that any organization would be willing to develop a CSS project.

**B. CSS project administrators are not responsible for the code compliance of Opt-Outs.**

CMUA agrees with the December 23, 2020, comments offered by Sacramento Municipal Utility District (SMUD)<sup>7</sup> regarding compliance verification. CSS project administrators are obligated to submit required information to ensure the project's compliance with California building code. The nature of the CSS program ensures project compliance with the code over the full 20-year term. If a building owner opts out of a CSS project, the building is, by that decision, no longer part of the CSS project. It is unreasonable to expect a CSS project administrator to confirm a building owner's compliance with California building code. The CSS project administrator has no legal ability, authority, or responsibility to assure a private building owner's compliance with California building code once the building owner is no longer a part of the CSS project. Code Compliance is the responsibility of local regulatory authorities, not a CSS project

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<sup>6</sup> *Ibid.*

<sup>7</sup> SMUD Comments on Lead Commissioner Workshop re 2022 Energy Code Solar Photovoltaic and Heat Pump Baselines -19-BSTD-03, (2.b.iii.b.).  
<https://efiling.energy.ca.gov/GetDocument.aspx?tn=236157&DocumentContentId=69141>

administrator. To the extent the Energy Commission requires project administrators to engage in any compliance-related reviews, it is critical that Title 24 ensures that the costs of performing such work are recoverable by the project administrator.

### III. CONCLUSION

CMUA appreciates the opportunity to offer these comments on the 15-Day Express Terms. CMUA supports the CSS Program as established in California's 2019 Building Standards.<sup>8</sup> However, CMUA is concerned that the changes to the CSS program proposed in the 15-Day Express Terms will have the effect of discouraging future CSS programs and eliminating this important compliance option. CMUA is further concerned that these changes will act to continue the current inequitable distribution of rooftop PV costs, and could reduce the supply of affordable new housing for lower income home buyers. CMUA encourages the Energy Commission to carefully evaluate the impact that this policy change may have on the CSS compliance option and the potentially adverse effect this policy change could have on California's lower income electricity consumers and home buyers.

Dated: July 28, 2021

Respectfully submitted,



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<sup>8</sup> 24 CCR § 10-115 and CCR § 150.1(b)(1).