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on 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 CONTAINED IN THE CALIFORNIA CODE OF
REGULATIONS, TITLE 20**

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The California Community Choice Association¹ (CalCCA) submit these Comments on the proposed *Amendments to the Load Management Standards Contained in the California Code of Regulations (CCR), Title 20* (Amendments), issued by the California Energy Commission (Commission) on December 22, 2021.

I. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

The Amendments require “utilities” to adopt hourly marginal cost rates, employing a very specific Commission-mandated methodology, to be inputted into the Commission’s Market Informed Demand Automation Server (MIDAS) in the service of encouraging customer-supported load management. CalCCA supports the Commission’s efforts; indeed, community choice aggregators (CCAs) continue to evaluate load-management tools for their customers, although these efforts are challenged by limited access to investor-owned utility (IOU) real-time

¹ California Community Choice Association represents the interests of 22 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, 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.

customer data. CalCCA further supports the general concept of a statewide automated system incorporating time and location-dependent signals, like MIDAS, as a tool to incentivize automation service providers to create products to automate demand flexibility. CalCCA parts company with the Commission, however, on the Commission’s legal authority to mandate its prescriptive rate methodology for CCAs.

The Amendments step beyond the load management jurisdiction granted to the Commission under Public Resources Code (PRC) section 25403.5.² The statute, enacted in 1976, authorized the Commission to ensure that utilities were controlling their load before authorizing the construction of additional generating resources under its siting jurisdiction. The Commission’s legal authority extends to “utilities,” and arguably only those regulated by the California Public Utilities Commission (CPUC). Notably, in 1976 when the legislature granted jurisdiction under the statute, CCAs did not exist, and the Legislature has never amended the statute to include CCAs. Despite clear statutory language and consistent regulatory history, however, the Amendments expressly extend the marginal cost rate mandate to CCAs.

Not only do the Amendments apply the new standards to CCAs, but they expand the application of the load management standards and the definition of “utility” to include CCAs for purposes of all load management regulations located in Article 5 (sections 1621-1625).³ These modifications therefore effectively apply to CCAs 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)). Likewise, the expanded definition of “utility” to include CCAs will set a precedent for any future regulations promulgated under the 1976 statutory authority.

² Cal. Pub. Res. Code § 25403.5.

³ Cal. Code of Regs, Title 20, Article 5, §§ 1621-1625.

The Amendments overstep the Commission’s jurisdictional boundaries not only by including CCAs within the scope of regulations without legal authority but by mandating a specific rate methodology that infringes on CCA governing boards’ exclusive ratemaking authority. Assembly Bill (AB) 117, enacted in 2002, established a regulatory structure in which CCA customers’ rates are approved by their local governing boards.⁴ Unlike IOUs, CCA rates are not overseen by the CPUC or, by the Final Staff Report’s own admission, the Commission.⁵ Despite these limitations, the Amendments step squarely into the ratemaking arena, requiring CCAs to implement a very specific rate methodology and giving the Commission, not CCA governing boards, the right to impose injunctive relief or penalties on CCAs that do not comply.

The Commission attempts to justify this overreach on several grounds. First, it claims, unpersuasively, that its actions are not ratemaking. A quick glance at section 1623(a)(1) of the Amendments, which prescribes the rate methodology and the required rate elements, proves otherwise. Second, it claims that the Legislature intended for CCAs to be included within the scope of the statute by referencing utility “service territories.” This rationale ignores the fact that the statute was enacted in 1976, long before CCAs were authorized in 2002, and has never been amended to include them. Third, it claims that, practically, it is important to include CCAs to optimize the benefits of MIDAS. While CCA participation will no doubt enhance the usefulness of MIDAS, practical observations do nothing to change legal authority.

To resolve these unlawful infringements on CCA rate autonomy and operations, CalCCA requests the following revisions to the Amendments:

⁴ AB 117, Stats. 2002; ch. 838 (codified at Cal. Pub. Util. Code § 366.2(c)(1)).

⁵ Herter, Karen and Gabin Situ, 2021. *Analysis of Potential Amendments to the Load Management Standards: Load Management Rulemaking, Docket Number 19-OIR-01*. California Energy Commission. Publication Number: CEC-400-2021-003-SF (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 . . .”).

- Apply the marginal cost rate requirements to CCAs on a *voluntary* basis;
- Leave approval of any CCA marginal cost rate to the CCA governing boards; and
- Limit the application of the load management standards on CCAs and remove CCAs from the definition of “Utility” to avoid the inadvertent imposition of other existing and future load management standards on CCAs.

With these changes, CalCCA looks forward to supporting the Commission’s foundational goal of encouraging customer-supported load management and further developing MIDAS in a manner that best promises effectiveness for CCA customers and responds to the directives of CCA governing boards.

II. THE AMENDMENTS MANDATE A SPECIFIC RATE METHODOLOGY, REQUIRING ADOPTION OF HOURLY LOCATIONAL MARGINAL COST RATES WITH REQUIRED ELEMENTS FOR EACH CUSTOMER CLASS

The Amendments mandate that CCAs (in addition to the IOUs and publicly-owned electric utilities (POUs)) *develop and submit to their rate approving body within one year of the effective date of the regulations at least one marginal cost rate for each customer class.*⁶

“Marginal cost” or “locational marginal cost” is defined as “the change in current future electric system cost that is caused by a change in electricity supply and demand during a specified time interval at a specified location.”⁷ The Amendments specify the elements of the marginal cost rates and require the following calculation:

Total marginal cost shall be 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 on a time interval of no more than one hour. Energy cost computations shall reflect locational marginal cost pricing as determined by the associated balancing authority, such as the California Independent System Operator, the Balancing Authority of Northern California, or other balancing authority. Marginal cost computations shall reflect the variations in the probability and value of system reliability of each component (generation, transmission, and distribution). Social cost

⁶ Amendments § 1623(a).

⁷ *Id.*, at § 1623(c)(7).

computations shall reflect, at a minimum, the locational marginal cost of associated greenhouse gas emissions.⁸

Failure to comply with the proposed regulations can trigger the Executive Director filing a complaint with the Commission or seeking injunctive relief.⁹

The regulation treads on the ratemaking authority of the CPUC, POU boards, and CCA governing boards. Not only does it mandate the high-level methodology that must be employed – marginal cost vs. embedded cost – it goes into meaningful detail regarding the calculation of the rate. As explained below, by enveloping CCAs into the application of the load management standards, the Amendments have the effect of unlawfully mandating that CCAs adopt particular rates. It specifies the rate elements, including transmission, generation, and distribution costs. It further specifies the frequency of change in the rate to one hour or less. It also specifies the source of the marginal costs – in the case of CCAs, the California Independent System Operator (CAISO) locational marginal cost. Finally, it specifies that the rate must be developed separately for each customer class. The mandated detail goes far beyond the scope of a “rate structure.”

III. THE COMMISSION SHOULD REVISE THE AMENDMENTS TO ALLOW CCA PARTICIPATION IN THE PROPOSED RATE PROGRAM ON A VOLUNTARY BASIS, LEAVING RATE APPROVAL TO CCA GOVERNING BOARDS

The Commission promulgates the Amendments under the Warren-Alquist Act, PRC section 25403.5. However, section 25403.5 does not grant the Commission authority to impose standards for electrical load management on CCAs and, particularly, does not impose on CCAs those standards that include “adjustments in rate structure.” Indeed, the Final Staff Report accompanying the Amendments *acknowledges* the lack of ratemaking authority over CCAs.¹⁰

⁸ *Id.*, at § 1623(a)(1).

⁹ *Id.*, at § 1621(f) (allowing the Executive Director to file a complaint with the Commission or seek injunctive relief for, among other reasons, violation of the provisions of the load management regulations).

¹⁰ Final Staff Report at 16-17.

The Final Staff Report attempts, however, to rationalize shoe-horning CCAs into the program on grounds that (1) the Amendments propose a “rate structure,” rather than a rate, (2) CCAs provide service within the service area of the IOUs, and (3) including CCA customers is necessary to ensure the success of the load management program.¹¹ As set forth more fully below, none of these arguments can cure the Commission’s lack of jurisdiction to *mandate* CCA adoption of a specific rate design. Any CCA inclusion in the program therefore must be on a voluntary basis.

A. Public Resources Code Section 25403.5 Does Not Grant the Commission Authority to Mandate Application of the Load Management Standards to CCAs

PRC section 25403.5 was enacted in 1976 with the purpose of mandating that a utility certify its compliance with load management standards before the Commission would approve a new generation project.¹² Subsection 25403.5(a) requires that the Commission “adopt standards by regulation for a program of electrical load management for each *utility service area*.”¹³ PRC section 25118 defines a “service area” as “any contiguous geographic area serviced by the same electric utility.”¹⁴ The PRC does not define “Utility,” and CCAs are not included in that classification or definition either in the PRC or the Public Utilities Code. Among the techniques the Commission is to consider for load management include “[a]djustments in rate structure to encourage use of electrical energy at off-peak hours or to encourage control of daily electrical load.”¹⁵

¹¹ *Id.*

¹² Cal. Pub. Res. Code § 25403.5 (1976) (amended in 1980 to eliminate a penalty clause for failure to comply, and to add § 25300 to establish a forecast reporting requirement for electric utilities, all of which was subsequently revised by 2002 through Senate Bill (SB) 1389 (repealing § 25300) to create reporting requirements concerning load forecasts through the Integrated Energy Policy Report (IEPR) process).

¹³ *Id.*, at § 25403.5(a).

¹⁴ *Id.*, at § 25118.

¹⁵ *Id.*, at § 25403.5(a)(1).

Of note are the provisions of section 25403.5 that affirm that the load management program was intended only for CPUC-regulated utilities. For example, the statute states that “[c]ompliance with . . . adjustments in rate structure *shall be subject to the approval of the Public Utilities Commission in a proceeding to change rates or service.*”¹⁶ The CPUC’s jurisdiction extends to IOUs, and the CPUC has acknowledged its lack of ratemaking authority over CCAs.¹⁷ Therefore, on its face the statute explicitly suggests its exclusive application to only CPUC-regulated utilities. Furthermore, section 25403.5 mandates that “[a]ny expense or any capital investment required of a utility by the standards shall be an allowable expense or an allowable item in the utility rate base and *shall be treated by the Public Utilities Commission as allowable in a rate proceeding.*”¹⁸ Again, the clear language of the statute evidences its applicability to only CPUC-regulated utilities.

Given this statutory backdrop, the Final Staff Report acknowledges the inability to include CCAs within its direct statutory reach. To get around this fact, the Final Staff Report concludes that because CCAs operate as load-serving entities (LSEs) *within the electric utility service areas*, the Amendments must apply to CCA customers to ensure the programs’ success:

The Warren-Alquist Act was adopted prior to the creation of CCAs. Nevertheless, CCAs operate within the geographical service territories of electric utilities. So, load management standards apply to CCAs that provide electricity to customers within these service areas. *For load management standards to function in a manner that meets the intent of the statute, the standards need to apply to most electric customers.* To the extent CCA service is the default provider and continues to expand in

¹⁶ *Id.*

¹⁷ See, e.g., Decision (D.) 05-12-041, *Decision Resolving Phase 2 Issues on Implementation of Community Choice Aggregation Program and Related Matters*, Rulemaking (R.) 03-10-003 (Dec. 15, 2005) at 9-10, 42 (noting that “existing law protects CCA customers” by subjecting “[e]ntities of local government, such as CCAs, . . . to numerous laws that will have the effect of protecting CCA customers and promoting accountability by CCAs,” and that the CPUC has “consistently treated CCAs as stand-alone operations with ratemaking discretion”).

¹⁸ Cal. Pub. Res. Code § 25403.5(b).

*California, any other interpretation would diminish the effectiveness of the proposed amendments to the load management standards and defeat the purpose of the statute.*¹⁹

According to this logic, the Commission’s jurisdiction would extend to any matters, including unlawful rate mandates on CCAs, necessary to ensure the success of the load management standards. In other words, the Commission is using the end (success of the load management standards), to justify the means (assertion of jurisdiction over CCAs), even absent its authority to do so.

B. The Commission’s Rate Mandate Infringes on the Ratemaking Autonomy of CCA Governing Boards Prescribed in AB 117

AB 117 passed in 2002 to enable local governments to establish CCAs to purchase electricity on behalf of residents and businesses in place of investor-owned utilities.²⁰ CCAs have independent control over their procurement, for which they are authorized “to group retail electricity customers to solicit bids, broker, and contract for electricity and energy services for those customers.”²¹ AB 117 incorporates an overall statutory and regulatory framework based on the principle of CCA operational and procurement autonomy. As part of CCA service, an implementation plan adopted by the governing board of a CCA is certified by the CPUC detailing operational processes including ratesetting and “[p]rovisions for disclosure and due process in setting rates and allocating costs among participants.”²² In short, CCA governing boards have autonomy and independence from regulatory oversight, including the CPUC or this Commission, over their rate-setting and procurement on behalf of their customers.²³ Critically, the CPUC has not mandated particular rates for CCA customers.

¹⁹ Final Staff Report at 17 (emphasis supplied).
²⁰ AB 117, Stats. 2002; ch. 838 (codified at Cal. Pub. Util. Code § 366.2).
²¹ Cal. Pub. Util. Code § 366.2(c)(1).
²² *Id.*, at § 366.2(c)(3)(B)-(C).
²³ *See, infra*, n. 17.

After asserting its authority to include CCAs, the Final Staff Report correctly notes that “[s]pecific to rate structure, the [Commission] does not have exclusive or independent authority.”²⁴ The Report also states that “rates proposed in compliance with the load management standards are subject to approval by the CPUC, CCA governing boards, and POU governing boards.”²⁵ Given the Commission’s lack of ratemaking authority, the Report states that “the proposed load management standards address *overarching structural features, while the detailed mechanics of the rate design are left to the utilities and their regulators or governing boards.*”²⁶

Despite these statements, the proposed Amendments *mandate* the development and submission of particular locational marginal cost rates for each customer class, with review, approval, and enforcement authority provided to the Commission.²⁷ In fact, subsection 1623(a)(1) even mandates the exact elements of how the CCA is to calculate “total marginal cost” in its rates. The Amendments go far beyond a “rate structure,” and instead require CCA local governing boards to approve a particular rate design and calculation for each customer class of a CCA, with Commission enforcement consequences for failure to do so. While the Final Staff Report correctly notes that CCA governing boards have exclusive authority to set rates, the actual amended regulations improperly infringe on that authority and unlawfully impose prescriptive rate mandates outside of the jurisdiction of the Commission. As a result, the Amendments must be revised to remove the rate mandates, and instead provide recommendations to support the Commission’s load management program.

²⁴ Final Staff Report at 17 (emphasis supplied).

²⁵ *Id.* (emphasis supplied).

²⁶ *Id.* (emphasis supplied).

²⁷ Amendments §§ 1621(d)-(f) (mandates for submissions to Commission for approval), 1623(a) (mandate requiring development of marginal cost rates (as calculated according to the subsection 1623(a)(1) for each customer class)).

C. The Commission Should Recommend Voluntary Adoption of Marginal Cost Rate to CCAs to Further its Load Management Goals

CCAs support the Commission’s goals for load management, and generally support time-based rates uniquely developed by CCAs pursuant to their ratemaking autonomy and which suit each CCA’s local needs. However, CCAs are currently unable to create time-based rates given the lack of access to necessary data to support such rates that would need to be provided by the IOU in the territory that the CCA operates. CCAs are hopeful that such data will be made available in the future and are amenable to rate *recommendations* provided by the Commission to support the load management standards. Accordingly, the Commission should modify the Amendments, consistent with the proposed language in Appendix A, attached hereto, to clarify that the proposed rate structures and tariffs are *recommendations* for CCAs, rather than *mandates*. The governing boards of each CCA will then retain their exclusive authority, and discretion, to adopt the recommended rates when technically feasible and cost effective for specific rate classes.

IV. THE COMMISSION SHOULD REVISE THE AMENDMENTS TO LIMIT APPLICATION OF THE REGULATIONS TO CCAS AND REMOVE CCAS FROM THE DEFINITION OF “UTILITY”

The Amendments to section 1621 would add CCAs into the “Application” of Article 5 (sections 1621-1625), as well as add CCAs into the definition of “Utility.” For the same reasons described in section III., above, the Commission must revise the Amendments as set forth in Appendix A to limit the application of Article 5 on CCAs and remove CCAs from the definition of “Utility.” The Commission does not have the requisite authority under section 25403.5 to mandate broad load management programs for CCAs.

In addition, as currently drafted the Amendments would inadvertently apply all current and future sections of Article 5 on CCAs, even those not being considered in this rulemaking. By

adding CCAs into the “Application” of Article 5, as well as adding CCAs into the definition of “Utility,” CCAs would be mandated to comply with sections 1622 (utility peak load cycling programs applicable to residential electric water heaters and electric air conditioners), 1624 (running of swimming pool filter pumps during off-peak hours), and 1625 (load management standards for non-residential customers). Imposing the requirements of sections 1622, 1624, or 1625 on CCAs was never contemplated in the pre-rulemaking phase or in the Final Staff Report. Therefore, the Amendments should be revised as set forth in Appendix A to limit the application of Article 5 to exclude CCAs.

V. THE COMMISSION CAN ACHIEVE ITS LOAD MANAGEMENT GOALS BY RECOMMENDING VOLUNTARY ADOPTION OF RATES BY CCAS TO POPULATE THE MIDAS DATABASE

From a high level, the goals of the MIDAS database and the Commission’s proposed load management program are compelling – to “form the foundation for a statewide system of granular time and local dependent signals that can be used by automation-enabled loads to provide real-time load flexibility on the electric grid.”²⁸ The Commission likely committed extensive resources to the creation of the MIDAS system, a central, statewide machine-readable database of rates and other grid signals accessible to customers and third-party automation service providers. Central to the success of the MIDAS database, however, is the adoption by “Utilities” of hourly locational marginal rates to populate the MIDAS database. Without those rates, the Commission believes that its hopes for the MIDAS system cannot be fulfilled, and third-party automation service providers will lack the incentive to develop demand response products to interact with the MIDAS database.

²⁸ Final Staff Report, Abstract at iii.

The problem with this “tail wagging the dog” strategy is that forcing uniform rate design on a diverse group of LSEs subject to unique legal, regulatory, and commercial constraints is problematic and complex. With respect to CCAs, the Commission simply lacks the legal authority to require the adoption of the rates. In addition, from a practical and commercial perspective, each CCA has unique characteristics that contribute to any decision to adopt particular rates for customers.

In short, the Commission *cannot* force fit a particular rate on a CCA to satisfy the requirements of its MIDAS system. Instead, the Commission *can* recommend voluntary adoption of such rates to populate the MIDAS, with the promise to LSEs such as CCAs of a method to allow their customers to access this simplified approach to demand response. CalCCA therefore encourages the Commission to adopt the modifications to the Amendments as set forth in Appendix A.

VI. CONCLUSION

CalCCA appreciates Commission staff’s efforts in Docket 21-OIR-03 and looks forward to further collaboration on this topic.

Respectfully submitted,



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February 7, 2022

APPENDIX A
CalCCA Redline of Amendments (in green)

Section 1621 General Provisions

(b) Application. Each of the standards in this article applies to the following electric utilities: Los Angeles Department of Water and Power, San Diego Gas and Electric Company, Southern California Edison Company, Pacific Gas and Electric Company, and Sacramento Municipal Utility District, as well as In addition, the standards set forth in subsection 1623(e) of this Article apply to any Community Choice Aggregator (CCA) operating within the service area and receiving distribution services from the foregoing electric utilities. The ~~California Energy~~ 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 any customers of CCAs operating within the service area of such electric utilities.

(c) Definitions. In this article, the following definitions apply:

~~(4)~~(15) “Utility” means those electric utilities to which the sections of this article apply, as specified in subsection (b). A, and any CCA serving customers within the service area of any of those specified electric utilities is not a Utility.

Section 1623 Load Management Tariff Standard

(e) Electricity Rates and CCAs. CCA are encouraged, to the extent cost-effective, technologically feasible, and consistent with the directives of their local governing board, to:

(1) Develop and present to its governing board hourly or sub-hourly marginal cost (to be calculated in accordance with section 1623(a)(1)) rate(s) for (a) particular customer class(es) compatible with the goals of the Commission’s load management standards set forth in this Article;

(2) Provide the Commission with informational copies of the rates approved by a CCA’s local governing board;

(3) Upload the approved rate to the Commission’s MIDAS database

(4) Allow its customers access to rate information application to the customer with a single RIN assigned by the CCA;

(5) Contribute information to the Utility single statewide tool for authorized rate data access by third parties, as set forth in section 1623(c); and

(6) Encourage mass-market automation of load management through information and programs, including appropriate educational outreach to inform CCA customers of the rate tariff, and how the tariff may provide bill savings.

Nothing in this subsection (e) shall subject CCAs to the requirements of sections 1621(d)-(h), or 1623(a)-(d) of this Article.