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on Draft Staff Report

Additional submitted attachment is included below.

STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:

Load Management Rulemaking

Docket No. 19-OIR-01

**COMMENTS OF THE CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION
ON DRAFT STAFF REPORT**

The California Municipal Utilities Association (“CMUA”) appreciates the opportunity to provide comments to the California Energy Commission (“Commission”) on the April 12, 2021 Draft Staff Report Workshop (“Workshop”) and the *Draft Staff Report: Analysis of Potential Amendments to the Load Management Standards* (“Draft Staff Report”), issued on March 25, 2021.

I. INTRODUCTION

CMUA supports the Commission’s goal of developing a standardized system that will enable broad deployment of automated technologies in order to increase the availability of demand flexibility to the grid. The wide use of these technologies will help the state achieve its greenhouse gas (“GHG”) emission reduction goals, while also helping to improve grid reliability. Further, because of the Commission’s role in setting building energy efficiency standards, setting appliance efficiency standards, adopting flexible demand appliance standards, and supporting the state’s forecasting and long term resource planning, the Commission is clearly the correct agency to lead this multi-agency effort. Given the complexity and novelty of the task at hand, the Commission’s expertise will be essential to effectively developing both a centralized database of utility rates and the tools and protocols necessary for automation technologies to access and

respond to the utility rate signals. The Commission is also well-suited to coordinate a broad educational effort to ensure that customers are able to understand the benefits of this program.

However, CMUA has significant concerns with the current structure of the proposed requirement in the Draft Staff Report, which would require certain publicly owned utilities (“POUs”) to develop a specific rate structure for each rate class and present the associated tariff(s) to their governing boards for approval by March 2023. While not requiring that POU governing boards ultimately approve the rate structure, these requirements would represent a fundamental infringement of the ratemaking authority and autonomy of the local governing boards. Authorizing the Commission to take on such a primary role in the design of electric rate structures for both the investor owned utilities service areas and the identified POUs, which would cover the vast majority of customers in California, would represent a fundamental shift in the balance of the ratemaking authority set forth in the Constitution and enabling statutes. The legislative history of the load management statutes does not support such a fundamental shift. Instead, CMUA urges the Commission to modify its proposal to make the standard rate structure a *recommendation*, such that the individual POUs would be able to focus on the rate classes where such a program will be most impactful and cost effective as well as to tailor the programs to their specific circumstances and customer-base.

II. COMMENTS ON DRAFT STAFF REPORT

The Draft Staff Report would require the identified POUs to develop a voluntary, sub-hourly marginal cost tariff for every single customer rate class.¹ These new sub-hourly rates would need to be responsive to marginal grid signals, which could include marginal prices, marginal GHG metrics, or some other signal that would be approved by the Commission. As

¹ Draft Staff Report at 57.

clarified by Commission staff during the Workshop, the POU would be obligated to develop a conforming tariff for each customer class and present those tariffs to its governing board for approval. That governing board would still have the authority to reject this rate. However, Commission staff also clarified that if the POU presented what the Commission determined was a nonconforming rate schedule to its governing board, the Commission would likely notify and work with the POU to address any identified deficiencies. The Draft Staff Report asserts that this requirement is consistent with the existing limits on Commission ratemaking authority because: “the proposed load management standards [would] address overarching structural features, while the detailed mechanics of the rate design [would be] left to the utilities and their regulators or governing boards.”²

While CMUA appreciates the clarifications on ratemaking authority and the express acknowledgement that the POU governing board maintains the authority to reject any proposed rate, CMUA remains concerned with the proposal. As drafted, the proposed standard would still go beyond the intent of the authorizing statute by requiring the development and presentation of a specific rate and would significantly infringe on the ratemaking authority of the POU governing boards. As described below, CMUA urges the Commission to modify the proposal to give the POU the necessary flexibility in how these rates are designed and how they are presented to their governing boards.

A. The Commission Lacks Statutory Authority to Mandate that POU Present Specific Rate Designs to their Governing Boards for Approval

As CMUA described in its comments submitted in this proceeding on March 16, 2020, as well as in comments submitted in Docket No. 08-DR-01 on December 19, 2008, there is a long

² Draft Staff Report at 19.

and complicated legislative history associated with Public Resources Code section 25403.5.³ As initially enacted by Assembly Bill (“AB”) 4195 (stats. 1976), compliance with the load management standards was originally a requirement before the electric utility would be able to site a new power plant. However, the Legislature determined that the inability to site a needed power plant was too severe of a penalty, and in AB 3062 (stats. 1980) eliminated that penalty and replaced it with a simple obligation for electric utilities to report to the Commission on their efforts to implement the load management standards or, alternatively for POU, to provide a description of why the POU governing board determined that the load management standard was unsuitable. This information was reported to the Commission as part of each electric utility’s biannual obligation to provide a report on its load and supply forecasts. In 2002, SB 1398 eliminated the statutes specifying this forecast reporting requirement and replaced it with the current load and supply forecast reporting as part of the Integrated Energy Policy Report (“IEPR”). When the Legislature made that change, the direction for electric utilities to report on load management standards was simply eliminated.

Nothing in the 45 year history since AB 4195 added Public Resources Code section 25403.5 suggests that the intent of the Legislature is for the Commission to assume a central role in the rate design for the vast majority of retail customers in California. The Legislature has only reduced the role of this provision and has not responded to the inaction on these regulations over the past several decades. However, as currently proposed in the Draft Staff Report, the identified POU, would need to develop tariffs for all customer classes that meet new and fairly rigid structural requirements, and would then need to submit these tariffs to the Commission in order for the Commission to review them for consistency with the load management standards and to

³ See Comments of the California Municipal Utilities Association, Docket No. 08-DR-01, Dec. 19, 2008, at 4-10.

identify necessary corrections. Further, the Commission is empowered to approve the acceptable types of marginal signals that can be used, which would be the core element of these new tariffs. Even without mandating the adoption of these tariffs, the Draft Staff Report still infringes on POU governing board ratemaking authority.

B. The Proposal Would Be Unnecessarily Costly to Implement and Would Lead to Confusion.

Even without a mandate to adopt any new tariffs, the identified POUs would be required to go through the lengthy and costly process of developing new tariffs for every rate class and presenting those tariffs to their governing boards for adoption. This proposal provides no discretion for the POU to exclude certain rate classes. There are myriad reasons why such a tariff would not be feasible or suitable for certain classes of customers, such as a determination that the reliability and GHG reduction benefits that would result from the participation these customers would not justify the costs of developing and administering the program. Further, the tariff structures required by the load management standards may be technologically infeasible or inconsistent with existing governing board policies for certain rate classes.

Utility ratemaking is a complex and nuanced process that takes considerable resources. To comply with these requirements, the POU would need to go through the full process of developing a specific tariff and presenting that tariff to its governing board, even if POU staff determined that such tariff is not cost-effective for that rate class or is certain to be rejected by the governing board. It is also unclear what the expectations of the Commission are regarding the ability of the POU to present alternate tariffs that achieve the same goal but may not fit the exact requirements of the load management standards. Similarly, it is unclear if the Commission's review and approval process would allow a POU governing board to be able to

reject the tariff in favor of a modified tariff that does not meet the express requirements of the load management standards.

One other key concern is that this structure may be confusing for both the POU governing boards and the POU communities. The proposed regulation requires the POU to develop certain tariffs, the structure and form of which are subject to Commission approval, but states that the POU governing body is not required to adopt the tariffs. This ambiguity creates confusion regarding the actual mandates, especially in light of the fact that the direction to create a specific tariff is in and of itself an impingement on the governing board's ratemaking authority.

C. The Commission Should Modify the Proposal to Clarify that the Rate Structure is a Recommendation and that POU's have the Discretion to Present Modified Versions of the Rate Structure Tailored to their Community and Local Needs.

CMUA urges the Commission to make some modest but vitally important modifications to its proposed regulations that would clarify that the tariff structures are recommended and that each POU retains discretion over the tariffs that it presents to its governing board. Key to this POU discretion would be the ability of the POU to select which rate classes are appropriate for this tariff structure and to conform the tariffs to existing policies adopted by the governing board.

The benefit of these clarifications would be that the POU would be able to develop tariff proposals that the staff are able to fully recommend as reasonable, cost-effective, and consistent with local policies. It would avoid a circumstance where the POU staff would be developing tariffs that are known to be infeasible within their service territory, and which the POU staff would ultimately recommend that its governing board reject. Making these recommended revisions to the proposed regulations would remove the current ambiguity, as well as reduce the

administrative burdens of these requirements on the POUs, while still supporting the Commission's overall goals.

III. CONCLUSION

CMUA appreciates the opportunity to provide these comments and looks forward to continuing to work with staff in this proceeding.

Dated: April 23, 2021

Respectfully submitted,

/s/ Justin Wynne

Justin Wynne
BRAUN BLAISING SMITH WYNNE, P.C.
555 Capitol Mall, Suite 570
Sacramento, California 95814
(916) 326-5813
wynne@braunlegal.com

Attorney for the California Municipal
Utilities Association