

DOCKETED	
Docket Number:	19-OIR-01
Project Title:	Load Management Rulemaking
TN #:	238127
Document Title:	California Community Choice Association Comments - on Draft Staff Report 06 04 21pdf
Description:	Comments
Filer:	Shawn-Dai Linderman
Organization:	CALIFORNIA COMMUNITY CHOICE ASSOCIATION
Submitter Role:	Public
Submission Date:	6/4/2021 10:51:40 AM
Docketed Date:	6/4/2021



**COMMENTS OF THE CALIFORNIA COMMUNITY CHOICE ASSOCIATION
TO THE CALIFORNIA ENERGY COMMISSION ON THE DRAFT STAFF REPORT
Docket Number 19-OIR-01
Rulemaking to Consider Updates to the Load Management Regulations**

The California Community Choice Association¹ (CalCCA) submits these comments to the California Energy Commission (Commission) in Docket Number 19-OIR-01 on the *Draft Staff Report: Analysis of Potential Amendments to the Load Management Standards* (Draft Staff Report), issued on March 25, 2021.²

I. INTRODUCTION

CalCCA appreciates the opportunity to participate in the development of the Commission's Amendments to Regulations (Amendments) concerning Load Management Standards. The Commission's efforts to increase statewide flexible demand resources in light of California's goals regarding greenhouse gas (GHG) emissions reduction and improving grid reliability are consistent with CalCCA member efforts to provide clean, affordable and reliable energy to their customers. CalCCA supports the Draft Staff Report's encouragement of access to information that enables customers to manage their loads to utilize cleaner and cheaper energy supplies, as well as reduce peak load. Indeed, many CalCCA members are already offering such innovative load management programs. Examples of these programs include:

- Peninsula Community Energy's *Power on Peninsula* program that provides rebates to customers who install solar plus a battery backup system that dispatches evenly in the 4-9 p.m. peak window;

¹ California Community Choice Association represents the interests of 22 community choice electricity providers in California: Apple Valley Choice Energy, Baldwin Park Resident Owned Utility District, 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, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean Energy.

² Herter, Karen and Gavin Situ. 2020. *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-SD.

- Silicon Valley Clean Energy’s *GridShift* program, including an electric vehicle charging application that responds to time of use rates and optimizes the charging schedule; and
- Marin Clean Energy’s *Demand Flex Marketplace*, under development for Summer 2021, which focuses on reducing summer evening peak demand by offering payments for load shifting to off-peak hours and day-ahead event-based response to support grid reliability and resiliency.

Additionally, there are other community choice aggregator (CCA) load management programs operating, and new programs are being developed to address the needs of the grid and CCA customers.

These comments aim to provide an understanding of the unique position of CCAs, and revisions to staff’s recommendations ensure that the Amendments reflect the intent and authority of the Commission with respect to CCAs in this rulemaking. Specifically, CalCCA requests revisions to the Amendments to ensure that they: (1) do not inadvertently subject the CCAs to load management regulations not being considered in this rulemaking; (2) do not improperly subject the CCAs to prescriptive ratemaking mandates not within the Commission’s jurisdiction, but rather provide constructive recommendations to CCAs consistent with the Commission’s load management goals; and (3) provide sufficient flexibility to CCAs to develop load management programs and rate structures best suited to each CCA’s local needs. In addition, attached as Appendix A is a redline of proposed revisions consistent with these comments.

II. THE AMENDMENTS MUST BE REVISED TO REMOVE THE BROAD LOAD MANAGEMENT REQUIREMENTS IMPOSED ON CCAS THAT ARE OUTSIDE THE SCOPE OF THIS RULEMAKING

As a preliminary matter, the Amendments must be revised to remove the imposition on CCAs of broad load management standards not being considered in the current rulemaking. The Commission’s Load Management Standards are located in Article 5 within the Commission’s Energy Conservation regulations.³ The Load Management regulations contain five sections: (1) Section 1621 – General Provisions; (2) Section 1622 – Residential Load Management Standard (regarding utility peak load cycling programs applicable to residential electric water heaters and electric air conditioners); (3) Section 1623 – Load Management Tariff Standard; (4) Section 1624 Swimming Pool Filter Pump Load Management Standard (requiring utility programs

³ 20 Cal. Code Regs §§1621-1625.

concerning the running of swimming pool filter pumps during off-peak hours); and (5) Section 1625 – Non-Residential Load Management Standard.

The current rulemaking, as described in the Draft Staff Report, proposes to amend Sections 1621 and 1623 to create a foundation for a statewide demand automation system which aggregates and publishes time-varying rate information from utilities. By amending Section 1621 to add CCAs into the “Application” of Article 5, as well as adding CCAs into the definition of a “Utility,” the Amendments have the actual effect of imposing *all* of the Article 5 requirements on CCAs.⁴ Nowhere in the Draft Staff Report, however, is there any mention of amending Sections 1622, 1624, or 1625, or requiring that CCAs be subject to those regulations. In fact, in discussions between CalCCA and Commission staff regarding this issue, Commission staff agreed that the current rulemaking does not involve imposing the requirements of Sections 1622, 1624, or 1625 on CCAs. Therefore, CalCCA respectfully requests that the proposed amendments to Section 1621 be revised as set forth in Appendix A, attached hereto.

III. CCAS ARE NOT SUBJECT TO COMMISSION RATEMAKING JURISDICTION, BUT WELCOME RECOMMENDATIONS FROM THE COMMISSION REGARDING RATE STRUCTURES CONSISTENT WITH LOAD MANAGEMENT GOALS

The Amendments, as currently written, improperly mandate a particular rate on CCAs, which infringes upon the exclusive ratemaking authority of CCA governing boards. As set forth below, CalCCA urges the Commission to provide recommendations, rather than mandates, regarding rate structures to advance the Commission’s load management goals.

1. The Commission’s Ratemaking Mandate in the Amendments Improperly Infringes Upon the Exclusive Ratemaking Authority of CCA Governing Boards

Public Resources Code Section 25403.5(a) requires the Commission to “adopt standards by regulation for a program of electrical load management for each utility service area.”⁵

⁴ The current redline of Section 1621(c) would change the existing definition of “Utility” to: “those electric utilities including CCAs serving customers within a utility service area, to which the section of this article apply, as specified in subsection (b).” Subsection (b) sets forth the “Application” of Article 5, stating: “[e]ach 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 any Community Choice Aggregator (CCA) operating within the service area and receiving distribution services from the foregoing electric utilities.” Draft Staff Report at 52 (proposed amendments to Article 5, Sections 1621(b) and (c)).

⁵ Cal. Pub. Res. Code §25403.5(a).

Section 25118 defines a “service area” as “any contiguous geographic area serviced by the same electric utility.”⁶ The Draft Staff Report therefore concludes that because CCAs operate as load serving entities within the electric utility service areas subject to the load management regulations, the standards must apply to CCA customers.⁷

These standards, as set forth in the Amendments as currently drafted, would mandate that CCAs (as well as the three large investor-owned utilities (IOUs) and two of the publicly owned utilities (POUs)) develop and submit to their ratemaking authority a specific rate – “at least one hourly or sub-hourly marginal cost rate for each customer class.”⁸ The Draft Staff Report correctly notes that “[s]pecific to rate structure, the [Commission] does not have exclusive or independent authority.”⁹ The Draft Staff Report also states that “rates proposed in compliance with the load management standards are subject to approval by the California Public Utilities Commission, CCA governing boards, and POU governing boards.”¹⁰ The Draft Staff Report goes on to provide that given the Commission’s lack of ratemaking authority, “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.”¹¹

Despite the statements in the Draft Staff Report, the proposed Amendments actually *mandate* the development and submission of a particular rate, with review and approval requirements, as well as potential consequences at the Commission for failure to do so. Section 1623(b) of the proposed Amendments specifically requires “utilities” (which would include CCAs under the proposed definition) to, on or prior to March 31, 2023, “apply for approval of at least one hourly or sub-hourly marginal cost rate for each customer class” to its rate-approving body, and provide informational copies to the Commission when they are submitted.¹² Furthermore, on or prior to March 31, 2023, “utilities” are required to offer their customers “voluntary participation in a tariff or program that enables customers to automate response to marginal grid signals.”¹³ Compliance with Section 1623’s requirements regarding new rates is

⁶ *Id.*, §25118.

⁷ Draft Staff Report at 19.

⁸ *Id.* at 57 (proposed Amendments to Section 1623(b)(1)).

⁹ *Id.* at 19 (emphasis supplied).

¹⁰ *Ibid.*

¹¹ *Ibid.* (emphasis supplied)

¹² *Id.* at 57 (proposed Amendments to Section 1623(b)(1)).

¹³ *Id.* (proposed Amendments to Section 1623(b)(2)).

governed by Section 1621(d), which sets forth the Commission’s “review and approval” procedures for “plans, information, and documents” related to the rates, and requests for exemptions from the requirements.¹⁴ Section 1621(i) governs the ability of the Executive Director to file a Complaint with the Commission in the event of noncompliance with the requirements.¹⁵ Therefore, while the Draft Staff Report correctly notes that CCA governing boards have exclusive authority to set rates, the actual amended regulations improperly provide the Commission with authority over the approval of rates or rate structures of CCAs.¹⁶

2. Modification of the Amendments is Necessary to Clarify That The Amendments Provide Recommended, and Not Mandated, Rate Structures to CCAs

The Commission should modify the proposed regulations, consistent with the proposed language in Appendix A, attached hereto, to clarify that the proposed rate structures and tariffs are *recommendations*, rather than *mandates*, to achieve the Commission’s load management goals. The governing boards of each CCA will then retain their exclusive authority, and discretion, to adopt the recommended marginal hourly rates when technically feasible and cost effective for specific rate classes.

IV. FLEXIBLE RECOMMENDATIONS WILL PERMIT CCAS TO DEVELOP LOAD MANAGEMENT PROGRAMS AND RATE STRUCTURES CONSISTENT WITH COMMISSION GOALS AND BEST SUITED TO EACH CCA’S LOCAL NEEDS

The Commission’s goals to develop hourly or sub-hourly rates that can be entered into a uniform tool and leveraged by automated technology to decrease electricity use in peak hours, and encourage use during off-peak hours, are appreciated. These goals, however, cannot be achieved through prescriptive rate mandates that infringe upon the ratemaking authority of CCA governing boards. In addition, the unique characteristics of each CCA must be taken into account to determine how a particular rate or rate structure would suit a CCA’s local needs.

In particular, CCAs would need to determine whether a rate, including the resources and technology necessary to implement the rate, would be cost-effective for its customers (or a class of customers). Analysis would be necessary to identify appropriate price signals, estimate

¹⁴ *Id.* at 56 (proposed Amendments to Section 1621(d)).

¹⁵ *Id.* (proposed Amendments to Section 1621(i)).

¹⁶ In fact, several other parties, including CMUA, SMUD, LADWP and PG&E have expressed similar concerns regarding the potential infringement on ratemaking authority by the Commission as a result of the Amendments.

potential revenue impacts, and determine if price caps or other customer protections are necessary. Data access issues, and particularly when and in what form hourly data would be available from the utilities servicing CCA customers, would also need to be articulated and improved to enable a CCA to send proper hourly or sub-hourly price signals to its customers. Systems would need to be implemented to gather the data and bill based upon the data. Staff would need to become, and remain, fully trained to implement the new rate (even if no CCA customers ultimately take the rate). CCAs therefore encourage the Commission to provide flexible recommendations, rather than mandates, to allow each entity to tailor the load management recommendations to their unique local needs.

V. CONCLUSION

CalCCA appreciates the Commission's efforts towards creating statewide, uniform tools to encourage technologies that provide automated load management to reduce peak load, as well as utilize cleaner and cheaper energy supplies. The recommended revisions to the Amendments, as set forth in Appendix A, attached hereto, would provide CCAs with the flexibility they need in creating rates and programs, consistent with both the exclusive ratemaking authority of CCA governing boards and the Commission's load management goals. CalCCA looks forward to further collaboration with the Commission on this topic.

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APPENDIX A

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:
- (1) “Utility” means those electric utilities ~~including CCAs serving customers within a utility service area,~~ to which the sections of this article apply, as specified in subsection (b).

Section 1623 Load Management Tariff Standard

- (a) This standard requires that a utility develop marginal cost rates and that the utility submit such rates to its rate-approving body. In addition, this standard recommends that a Community Choice Aggregator (CCA) develop at least one hourly or sub-hourly marginal cost rate, to the extent cost-effective and technologically feasible, as set forth in subsection (e) below.
- (e) Tariff Electricity Rates and CCAs. A Community Choice Aggregator (CCA) operating within the service area of Utilities subject to the provisions of this Article 5 is recommended, to the extent cost-effective, technologically feasible, and consistent with the directives of the local governing board, to develop and present to its governing board at least one hourly or sub-hourly marginal cost rate compatible with the goals of the Commission’s load management standards set forth in this article. To the extent such a rate is adopted, the CCA shall upload the rate to the Commission’s MIDAS database, and provide appropriate educational outreach to inform its 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 subsections 1621(d)-(k) of this article.