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**CMUA Comment Letter on 45-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 2022 ENERGY CODE 45-DAY EXPRESS TERMS**

The California Municipal Utilities Association (CMUA) respectfully provides the following comments to the California Energy Resources Conservation and Development Commission (Energy Commission) regarding the Express Terms 2022 Energy Code, Title 24 Parts 1 and 6 (45-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 POUs 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, the CSS program provides an important compliance option for consumers who may not be best

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<sup>1</sup> Energy Commission Docket #21-BSTD-01, Document #237717, <https://efiling.energy.ca.gov/GetDocument.aspx?tn=237717&DocumentContentId=70942>

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

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.

CMUA is concerned that the changes proposed to the CSS set forth in the 45-Day Express Terms 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. Dedicated Community Energy Savings Benefits**

CMUA supports the requirement that a CSS program benefit must exceed the cost of participation. CMUA encourages the Energy Commission to recognize that such calculations, both for rooftop PV and for CSS, must reflect the actual cost of providing services. Customers who do not participate in such programs should not be forced to subsidize the benefits to participating customers, whether they have rooftop PV or participate in a CSS program. CMUA further encourages the Energy Commission to consider the cost of the CSS program compared to the rooftop PV option when evaluating a CSS program application.

### **B. Home Opt-Out**

Nothing in a CSS program should prevent those homeowners from installing rooftop PV, *in addition to their CSS program*, at any time in the future. However, an unlimited opt-out at any time creates significant challenges for CSS program developers and make it less likely that such programs will be developed.

- 1. An unlimited Opt-Out increases risk and uncertainty for CSS program developers.**

CSS program administrators invest substantial resources in the design and construction of solar systems for home owners in their community. Permitting a homeowner to opt-out at any time increases the risk that a CSS project will have been overbuilt for that community. In such a circumstance the program administrator would need to offload any excess generation. While medium and large utilities may have flexibility in how they manage excess generation, smaller utilities and non-utility program developers would face greater challenges as a result of the increased uncertainty created by this proposed language. This increased uncertainty will raise project risk and make it more difficult for a potential program developer to acquire the needed project financing. This project finance challenge will be greatest for the smaller utility and non-utility program developers.

While administering a CSS project will become more complicated if a home owner actually opts out, the mere potential for home owner to opt out at any time will increase project uncertainty, raise finance costs, and drive some potential CSS project developers away from this important compliance option. In other words, under the proposal, even if no homeowners actually opt-out, the change in policy will still have imposed financial harm on project developers, and by extension, California home buyers. Further, some projects will not have been developed because of the increased cost and administrative burden caused by an “opt-out at any time policy.”

**2. A CSS program compliance option can help low-income and disadvantaged home buyers.**

The distribution of residential rooftop PV installation is clearly biased toward higher income and wealthier households.<sup>3</sup> The subsidy from non-rooftop PV electricity customers to customers with rooftop PV<sup>4</sup>, combined with the higher average income for households with rooftop PV yields a clearly inequitable transfer from lower income households to support the rooftop solar PV purchased by higher income households. The CSS program can provide a more economic option for builders to support solar for more affordable housing. But an opt-out at any time policy adversely impacts the vitality of the CSS program option, further reducing the likelihood that potential builders would see the option as an economic solution for affordable new residential building. A CSS project can offer all California home buyers including lower income home buyers, a lower cost option to directly support solar energy for their homes. CMUA encourages the Energy Commission to carefully consider the potential negative impact this policy change would have on the ability of lower income Californians to buy a new home.

**C. CSS project operators 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>5</sup> regarding compliance verification. Operators of CSS projects are obligated to submit required information to ensure compliance with California building code. The nature of the CSS program ensures project compliance with the code over the full 20 year term. However, in the event that a new home buyer or future home owner opts out of the CSS, the Energy Commission must develop a means to assure code compliance. The CSS project

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<sup>3</sup> Barbose, Galen, et al. (2021) *Residential Solar-Adopter Income and Demographic Trends: 2021 Update*. Lawrence Berkeley National Laboratory, Energy Analysis and Environmental Impacts Division. <https://emp.lbl.gov/publications/residential-solar-adopter-income-and>

<sup>4</sup> Sergici, Sanem, et al. Quantifying new energy metering subsidies (2019). *The Electricity Journal*, Volume 32, Issue 8, October 2019 (106632).

<sup>5</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>

operator has no legal ability, authority, or responsibility to assure a private homeowner's compliance with California building code once the home buyer opts out of the program. Code Compliance is the responsibility of local regulatory authorities, not a CSS project operator.

### III. CONCLUSION

CMUA appreciates the opportunity to offer these comments on the 45-Day Express Terms. CMUA supports the CSS Program as established in California's 2019 Building Standards<sup>6</sup>. However, CMUA is concerned that the changes to the CSS program proposed in the 45-Day Express Terms will reduce the likelihood that a CSS program will be offered. 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 new housing for lower income home buyers. CMUA encourages the Energy Commission to carefully evaluate the impact that this policy change may have on this important compliance option and the potential adverse effect this policy change could have on California's lower income electricity consumers and home buyers.

Dated: June 21, 2021

Respectfully submitted,



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<sup>6</sup> 24 CCR § 10-115 and CCR § 150.1(b)(1).