

**DOCKET****05-DATA-1**DATE May 22 2006RECD. May 22 2006**CALIFORNIA ENERGY COMMISSION**

In the Matter of:	Docket No. 05-DATA-1
Proposed Adoption, Amendment, and Repeal of Regulations Governing the Commission's Data Collection System for the Energy Policy Report and Regulations Governing Disclosure of Commission Records.	

**COMMENTS OF THE NORTHERN CALIFORNIA POWER AGENCY ON THE  
"STAFF PROPOSED CHANGES TO THE CALIFORNIA ENERGY  
COMMISSION'S REGULATIONS ON DATA COLLECTION  
AND RELATED MATTERS."**

**I. INTRODUCTION**

Pursuant to the schedule established in "Docket No. 05-DATA-1 ("Data Collection Regulations Workshop") and the May 11, 2006 Notice of Committee Workshop, the Northern California Power Agency<sup>1</sup> (NCPA) hereby submits these written comments on *Staff Proposed Changes to the California Energy Commission's Regulations on Data Collection and Related Matters* ("Staff Proposal"), dated April 2006.

NCPA has worked closely with the publicly owned electric utilities ("POUs"), including those that are not members of NCPA, and note that these comments reflect the general agreement of the California POUs, including the members of the California Municipal Utilities Association ("CMUA") and the Southern California Public Power Authority ("SCPPA").

Although these comments address only one portion of the proposed changes to the data collection regulations, NCPA also concurs with the written comments submitted by CMUA, dated May 22, 2006. With regard to proposed modifications that are not

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<sup>1</sup> NCPA is a Joint Powers Agency whose members include the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, as well as the Bay Area Rapid Transit District, Port of Oakland, the Truckee Donner Public Utility District, and the Turlock Irrigation District, and whose Associate Members are the Lassen Municipal Utility District, Plumas-Sierra Rural Electric Cooperative, and the Placer County Water Agency.

addressed in either NCPA or CMUA's comments, NCPA expresses neither consent nor opposition.

## II. COMMENTS

NCPA's comments are limited to addressing proposed regulation §1311, which applies only to publicly owned utilities. The Staff Proposal notes that §1311 is being added to allow the California Energy Commission ("CEC" or "Commission") "to collect energy efficiency program data required by SB 1037."<sup>2</sup> Senate Bill (SB) 1037 added §9615 to the Public Utilities Code,<sup>3</sup> and addresses matters pertaining to energy efficiency and demand reduction programs. In its entirety, code §9615 provides:

*(a) Each local publicly owned electric utility, in procuring energy, shall first acquire all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible.*

*(b) Each local publicly owned electric utility shall report annually to its customers and to the State Energy Conservation and Development Commission, its investment in energy efficiency and demand reduction programs. A report shall contain a description of programs, expenditures, and expected and actual energy savings.*

The POUs feel strongly that the CEC's regulations should mirror the language of the legislation, providing for the collection of all authorized information, without seeking to obtain information that goes beyond the scope of SB 1037 and code §9615. Both the POU community and the Commission would be better served by having reporting regulations that reflect exactly the requirements set forth in the authorizing legislation; any reporting requirement that exceeds the requirements of SB 1037 is unwarranted.

This point is especially salient when considered in light of the language set forth in the authorizing legislation. The provisions of code §9615 are unique to POUs and reflect the only portions of SB 1037 that are applicable to POUs. In adopting code §9615, the legislature was able to take into account the unique nature of POUs and contemplated the kind of information that would be both beneficial to the Commission and something that all POUs would be able to readily provide. Accordingly, POUs of all sizes are required to provide their customers and the Commission with a report that contains a "*description of programs, expenditures, and expected and actual energy savings.*" Recognizing the unique nature of the data that is collected pursuant to SB 1037 and code §9615, this represents the only data collection activity where all entities are required to submit the same data, regardless of size. Accordingly, the POUs do not believe that it makes sense for the proposed regulations to attempt to expand in any way the scope of the data requested, especially in light of such unambiguous legislative language.

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<sup>2</sup> Staff Proposal at p. 40.

<sup>3</sup> Unless otherwise noted, all code section references shall be to the California Public Utilities Code.

NCPA encourages the Commission to remain cognizant of the fact that most POU's are small public agencies that have neither the fiscal nor personnel resources to cost-effectively respond to onerous data collection requirements. As with all of the reporting requirements set forth in the proposed modifications to the data collection regulations, the POU's sincerely hope that the Commission will balance this limitation with the usefulness of the data requested. Regulations that allow for the reporting of necessary and essential information, while still providing flexibility to the POU's regarding the form in which that information is provided, better serve the state's goals with regard to energy efficiency reporting requirements.

**A. Section 1311 Title.**

NCPA believes that proposed regulation §1311 should clearly set forth its applicability to locally owned electric utilities, which is defined in § 1302(35). To that end, NCPA proposes that the title of section §1311 be revised to read: "Energy Efficiency Program Data Collection for Publicly Owned Electric Utilities." Because POU's and investor-owned utilities are not subject to the same reporting requirements or oversight, all parties involved would be well served by clearly setting forth the applicability of the regulation in the title of the relevant section.

**B. Utility Applicability.**

The proposed regulation, in addition to noting that it would allow the CEC to collect energy efficiency program data, specifically provides that it would be doing so pursuant to the authorization set forth in SB 1037. As such, the requirement that each "publicly-owned utility" shall report the requested information should be revised to clarify that the requested information is only required of "local publicly owned electric utilities as defined in section 9604 which serve retail customers." (Code §9615(a) and (b)) Strictly speaking, the legislation does not address energy efficiency or demand reduction reporting for gas POU's, only electric POU's, and the fact that §1311 does reference gas energy efficiency programs (§1311(b)) could be confusing. Furthermore, the regulations should reflect that the reporting requirements are imposed only on individual POU's, and not on joint powers agencies such as NCPA and SCPPA, since these entities do not administer energy efficiency programs.

**C. Reporting Date.**

The proposed regulation would require POU's to report the required information by September 15<sup>th</sup> of each year. This date poses both fiscal and practical problems for most POU's. Many POU's operate on a July 1 to June 30 fiscal year; energy efficiency programs are developed and administered on the basis of the fiscal year, including tracking of program funds. A September 15<sup>th</sup> due date does not give these POU's sufficient time to complete their end of year activities and then prepare and review the program information. All report compilation, relative to both data collection and fiscal reporting activities, are prepared for the local governing bodies based on the same fiscal year schedule. The imposition of an arbitrary due date for the submission of energy

efficiency program related data could result in either skewed, incomplete, or misleading information for any given year since calendar year reporting would not allow a POU to provide complete information for energy efficiency program activity during the fiscal year around which the programs are based. Additionally, based on the fact that the POUs are already preparing reports for their local governing bodies based on the program year, requiring duplicative reporting based around some other time frame would result in the expenditure of considerable resources, both in terms of staff time and fiscal resources for the POUs.

NCPA recommends that the regulations be revised to reflect a due date for the submission of data that takes into account the fiscal year of the reporting party. The accuracy and integrity of the data collected is much more important than arbitrary due dates, and by allowing POUs to provide the relevant data only once, and after the close of the fiscal year, will help to insure that the CEC is receiving the most recent and accurate data possible. The POUs also urge the Commission to consider this in light of the due dates throughout the reporting regulations. Clearly, the advantages of having complete and concise information that accurately reflects the reporting year at issue far outweighs any administrative ease that may be gained by having all electric utilities report on a specific date.

#### **D. Scope of Requested Data.**

Sections (a)(1) through (a)(3) and (b)(1) through (b)(3) of §1311 would require the POUs to report the type of information specifically set forth in SB 1037. Sections (a)(4) and (b)(4) require a POU's energy efficiency report to include "the cost-effectiveness of each program, using the total resource cost test as identified in the *California Standard Practice Manual: Economic Analysis of Demand Side Programs and Projects*, October 2001," and in doing so exceeds the scope of the authorizing legislation. The POUs are concerned with this additional reporting requirement as it is unduly prescriptive in setting the exact form of test to be applied and would fail to provide the Commission with any additional meaningful information. Accordingly, section (a)(4) and (b)(4) should be stricken from the regulations.

##### **i. Requiring A Specific Measurement Mechanism Is Too Prescriptive.**

Electric POUs are required by statute to acquire energy efficiency resources that are "cost effective, reliable, and feasible." Accordingly, POUs are actively seeking and employing energy efficiency programs that meet all of these requirements. However, the statute does not go so far as to *require* detailed reporting on the cost effectiveness of each individual program using the "total resource cost test" ("TRC test"). Furthermore, there is no showing that the TRC test would even be an accurate indicator of the effectiveness of POU energy efficiency programs. The imposition of this requirement, in addition to going beyond the authorization set forth in SB 1037, could be extremely burdensome and costly to POUs, especially smaller POUs.

The proposed regulations would require the POUs – both large and small – to use the TRC test to determine the cost-effectiveness of the POU programs. NCPA notes that some POUs, such as the Los Angeles Department of Water Resources, are already using this test. However, the POUs are concerned with a prescriptive requirement that would impose the TRC test on all POUs. The TRC test was developed as part of a California Public Utilities Commission (“CPUC”) proceeding; the test itself was adopted for CPUC jurisdictional utilities. The TRC test, however, has never been shown to be the best way to determine the true value of an energy efficiency program, and its usefulness as a tool to measure cost-effectiveness, especially for small utilities, has never been proven.

Regulations that accurately reflect the language of SB 1037 and code §9615 would provide both the POUs and the Commission the flexibility necessary to effectuate the intent of the legislature with regard to energy efficiency program data reporting. To that end, regulations that are too prescriptive, and indeed go beyond the scope of the legislatively mandated reporting requirements, would in fact prevent some smaller POUs from being able to provide the Commission with the information it is seeking. Rather, allowing POUs the flexibility to incorporate information from their programs into a compilation document would be completely consistent with both the intent and language of SB 1037 and code § 9515, and will provide the Commission with an even greater breadth of information than would otherwise be available. Accordingly, the POUs urge the Commission to adopt reporting regulations that reflect the language of code §9615 and not to impose prescriptive regulations that could in-fact hinder collection of the information being sought.

ii. POUs’ Current Efforts For 2006 Are Consistent With The Intent Of The Proposed Regulations.

It is important to note that the POUs are currently working with the Commission on providing the very information requested, and that current efforts for 2006 are consistent with the proposed regulations, with modifications. Indeed, POUs have been working cooperatively to develop reporting requirements that would allow uniform reporting of the cost-effectiveness of energy efficiency programs. These efforts are being undertaken by NCPA and SCPPA, and include both small and large POUs across the state.

As noted by Scott Tomashefsky during the May 2, 2006 workshop, POUs are working together to capitalize on economies of scale and plan to submit a single report (under the delegation authority set forth in section 1303)<sup>4</sup> to the Commission that includes a broad range of program information. POUs are further working with CEC staff to develop means by which information on the cost-effectiveness of individual programs can be recorded and reported. POUs have also been working to develop specific tools that can be used to measure the cost effectiveness of the types of programs offered by POUs. Again, while POUs are striving to develop the means by which to provide the kind of information that the Commission believes would be helpful, in light of the fact that this information is not required by the statute, NCPA objects to the

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<sup>4</sup> Workshop Transcript, May 2, 2006, pp. 102-103.

prescriptive nature of the proposed regulation that is not consistent with the language of SB 1037 or code §9615(b).

**E. Demand Reduction Versus Energy Efficiency.**

As a practical matter, NCPA notes that the introductory portion of §1311 references "demand response," rather than "demand reduction." Consistent with SB 1037, the language should read "demand reduction."

As NCPA mentioned during the May 2, 2006 Workshop, SB 1037 addresses reporting requirements for both demand reduction and energy efficiency programs, while the proposed regulation speaks only to reporting for energy efficiency programs. To the extent that SB 1037 requires the POUs to report on both energy efficiency and demand reduction programs, a section on demand reduction programs should be clearly and unambiguously set forth in the proposed regulations (as either part of §1311 or a related section).

**III. CONCLUSION**

NCPA and its public power partners support the principles of Senate Bill 1037 and are committed to the development of cost effective energy efficiency and demand reduction programs. The POUs also respect and understand the implications this action has on the CEC's analytical processes and the need to collect this information. As we have shown in advance of this proceeding, the POUs are committed to working with the Commission to develop regulations that balance the analytical needs of the Commission with the cost and resource impacts associated with compiling and submitting program data.

Dated: May 22, 2006

Respectfully submitted,



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