

**Executive Committee Meeting  
Wednesday, May 3, 2023  
12:00 P.M.**

Charles F. McGlashan Board Room, 1125 Tamalpais Avenue, San Rafael, CA 94901  
Mt. Diablo Room, 2300 Clayton Road, Suite 1150, Concord, CA 94920

Members of the public who wish to observe the meeting and/or offer public comment may do so telephonically via the following teleconference call-in number and meeting ID:

For Viewing Access Join Zoom Meeting:

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Dial: 1-669-900-9128  
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1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Report from Chief Executive Officer (Discussion)
5. Consent Calendar (Discussion/Action)
  - C.1 Approval of 3.3.23 Meeting Minutes
  - C.2 Third Agreement with EV.Energy Corp.
6. Interim Load Management Standards Compliance Plan (Discussion/Action)
7. Regionalization Presentation (Discussion)

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8. Committee Matters & Staff Matters (Discussion)
9. Adjourn

*The Executive Committee may discuss and/or take action on any or all of the items listed on the agenda irrespective of how the items are described.*

DISABLED ACCOMMODATION: If you are a person with a disability which requires an accommodation or an alternative format, please call MCE at 1 (888) 632-3674 at least 72 hours before the meeting start time to ensure arrangements for accommodation.

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## MCE EXECUTIVE COMMITTEE MEETING MINUTES

Friday, March 3, 2023

12:00 P.M.

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<b>Present:</b>	Edi Birsan, City of Concord Barbara Coler, Town of Fairfax Cindy Darling, City of Walnut Creek David Fong, Town of Danville Kevin Haroff, City of Larkspur Eduardo Martinez, City of Richmond Max Perrey, City of Mill Valley Gabriel Quinto, City of El Cerrito Holli Thier, Town of Tiburon Sally Wilkinson, City of Belvedere
<b>Absent:</b>	Eli Beckman, Town of Corte Madera Devin Murphy, City of Pinole Shanelle Scales-Preston, City of Pittsburg
<b>Staff &amp; Others:</b>	Jesica Brooks, Board Clerk Vidhi Chawla, Manager of Power Resources Darlene Jackson, Lead Board Clerk Vicken Kasarjian, Chief Operating Officer Tanya Lomas, Internal Operations Assistant Justine Parmelee, Manager of Internal Operations Garth Salisbury, Chief Financial Officer & Treasurer Lindsay Saxby, Manager of Power Resources Maira Strauss, Manager of Finance Enyonam Senyo-Mensah, Office Manager Dawn Weisz, Chief Executive Officer

### 1. Roll Call

Chair Haroff called the regular Executive Committee meeting to order at 12:05 p.m. with quorum established by roll call.

### 2. Board Announcements (Discussion)

There were none.

### 3. Public Open Time (Discussion)

Chair Haroff opened the public comment period and there were comments made by members of the public Howdy Goudey and Ken Strong.

**DRAFT**

**4. Report from Chief Executive Officer (Discussion)**

Dawn Weisz, CEO, introduced this item and addressed questions from Committee members.

Chair Haroff opened the public comment period and there were no comments.

**5. Consent Calendar (Discussion/Action)**

C.1 Approval of 2.3.23 Meeting Minutes

Chair Haroff opened the public comment period and there were no comments.

Action: It was M/S/C (Darling/Thier) to **approve Consent Calendar item C.1.** Motion carried by roll call vote. (Absent: Directors Beckman, Murphy, and Scales-Preston).

**6. Fiscal Year 2023/24 Proposed Budgets (Discussion/Action)**

Garth Salisbury, Chief Financial Officer & Treasurer, and Maira Strauss, Manager of Finance, presented this item and addressed questions from Committee members.

Chair Haroff opened the public comment period and there were no comments.

Action: It was M/S/C (Coler/Quinto) to **recommend approval of the proposed FY 2023/24 Operating Fund, Energy Efficiency Fund, Program Development Fund, and Resiliency VPP Fund Budgets to the MCE Board of Directors.** Motion carried by roll call vote. (Absent: Directors Beckman, Murphy, and Scales-Preston).

**7. Deep Green Resource Mix and New Service Offering (Discussion)**

Vidhi Chawla, Manager of Power Resources, presented this item and addressed questions from Committee members.

Chair Haroff opened the public comment period and there were comments made by member of the public Daniel Segedin.

Action: It was M/S/C (Thier/Martinez) **that the Executive Committee recommend to the full Board, at its March 16, 2023 meeting, that MCE explores new GHG-free service offerings for its customers.** Motion carried by unanimous roll call vote. (Absent: Directors Beckman, Murphy, and Scales-Preston).

**8. Review Draft 3.16.23 Board Agenda (Discussion)**

Dawn Weisz, CEO, presented this item and addressed questions from Committee members.

**DRAFT**

Chair Haroff opened the public comment period and there were no comments.

Action: No action required.
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9. Committee Matters & Staff Matters (Discussion)

There were none.

10. Adjournment

Chair Haroff adjourned the meeting at 2:56 p.m. to the next scheduled Executive Committee Meeting on April 7, 2023.

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Kevin Haroff, Chair

Attest:

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Dawn Weisz, Secretary



May 3, 2023

TO: MCE Executive Committee

FROM: Melanie Biesecker, Customer Programs Manager

RE: Third Agreement with EV.Energy Corp. (Agenda Item #05 C.2)

ATTACHMENT: Proposed Third Agreement with EV.Energy Corp.

Dear Executive Committee Members:

**Summary:**

The proposed Third Agreement with EV.Energy Corp. ("Agreement") would provide MCE the ability to continue scaling up residential EV smart charging. This is important because smart charging helps MCE customers save money, reduce grid emissions, and shift & shape EV load away from the 4-9pm peak when electricity costs are high.

Background

Launched in fall 2021, MCE Sync is a smart phone app managed by EV.Energy Corp. that automates home EV charging to use the least expensive and cleanest energy on the grid.

The EV market continues to grow, and MCE strives to influence charging behavior and optimize the load from EV charging, maximizing benefits for our MCE customers, MCE, and the grid. On average, 80% of EV charging happens at home with every EV adding around 50% to a resident's overall electricity usage. As the EV market continues to grow, the importance of smart EV charging will be even more significant.

MCE Sync participants are shifting approximately 90% of their EV charging load away from the peak demand period of 4-9pm, resulting in bill savings of, on average, \$14.46/month. Customers who participated in the MCE Sync-scheduled low carbon events between June 2022 and March 2023 reduced grid emissions even farther, by 32%, by charging their EVs during peak solar hours.

### The Proposed Agreement

The proposed Agreement includes a goal to increase enrollment to 4,000 EVs by May 31, 2024. There are currently 1,108 enrolled EVs. The proposed Agreement would continue EV.Energy Corp.'s management of MCE Sync, while expanding the scope to maximize customer retention and participation in the Program, through:

- Enhanced multichannel marketing, outreach, and education, such as in-app and email notifications for low carbon events;
- Continuous improvements and feature enhancements to the app, including Peak FLEX market signals for EV charging during the summer months, time-of-use/carbon-intensity signals during other months, and event-based signals as directed by MCE;
- Enhanced customer incentives for ongoing participation in low carbon events, or other market/demand-response events;
- Home charger rebates for compatible chargers, as well as additional vehicle and charger integrations to remove barriers and enable more customers to participate.

### **Fiscal Impacts:**

The proposed budget of \$881,900 is derived from the Local Program Fund, which is generated from a portion of Deep Green customer revenue. As indicated in the FY23/24 Budgeting process, staff would spend down existing amounts in the Local Program Fund and would return to the Board with a request for more funding if funds are fully spent or committed.

### **Recommendation:**

Approve the proposed Third Agreement with EV.Energy Corp.

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT  
THIRD AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND EV.ENERGY CORP.**

**THIS THIRD AGREEMENT** ("Agreement") is made and entered into on **May 3, 2023** by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and EV.ENERGY CORP., a Delaware corporation with principal address at: 2100 Geng Road, Suite 210, Palo Alto, California 94303 (hereinafter referred to as "Contractor") (each, a "Party," and, together, the "Parties").

**RECITALS:**

**WHEREAS**, MCE desires to retain Contractor to provide the services described in **Exhibit A** attached hereto and by this reference made a part hereof ("Services");

**WHEREAS**, Contractor desires to provide the Services to MCE;

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. SCOPE OF SERVICES:**

Contractor agrees to provide all of the Services in accordance with the terms and conditions of this Agreement. "Services" shall also include cloud-based and/or SaaS solutions provided as part of the Services and any other work performed by Contractor pursuant to this Agreement.

**2. FEES AND PAYMENT SCHEDULE; INVOICING:**

The fees and payment schedule for furnishing Services under this Agreement shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement ("Term"). Contractor shall provide MCE with Contractor's Federal Tax I.D. number prior to submitting the first invoice. Contractor is responsible for billing MCE in a timely and accurate manner. Contractor shall email invoices to MCE on a monthly basis for any Services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond ninety (90) days will not be reimbursable. The final invoice must be submitted within thirty (30) days of completion of the stated scope of services or termination of this Agreement. MCE will process payment for undisputed invoiced amounts within thirty (30) days.

**3. MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the Services to be provided herein exceed the maximum sum of **\$881,900**.

**4. TERM OF AGREEMENT:**

This Agreement shall commence on **June 1, 2023** ("Effective Date") and shall terminate on **May 31, 2024**, unless earlier terminated pursuant to the terms and conditions set forth in Section 12.

**5. REPRESENTATIONS; WARRANTIES; COVENANTS:**

**5.1. CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Contractor represents, warrants and covenants that (a) it is a corporation that is duly organized, validly existing and in good standing under the laws of the State of **Delaware**, (b) it has full power and authority and all regulatory authorizations required to execute, deliver and perform its obligations under this Agreement and all exhibits and addenda and to engage in the business it presently conducts and contemplates conducting, (c) it is and will be duly licensed or qualified to do business and in good standing under the laws of the State of California and each other jurisdiction wherein the nature of its business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder, (d) it is qualified and competent to render the Services and possesses the requisite expertise to perform its obligations hereunder, (e) the execution, delivery and performance of this Agreement and all exhibits and addenda hereto are within its powers and do not violate the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, (f) this Agreement and each exhibit and addendum constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, and (g) it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt.

**5.2. COMPLIANCE WITH APPLICABLE LAW.** At all times during the Term and the performance of the Services, Contractor shall comply with all applicable federal, state and local laws, regulations, ordinances and resolutions ("Applicable Law")



**5.3. LICENSING.** At all times during the performance of the Services, Contractor represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all required permits, licenses, certificates and registrations required for the operation of its business and the performance of the Services. Contractor shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.

**5.4. NONDISCRIMINATORY EMPLOYMENT.** Contractor shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, gender identity, age or condition of disability. Contractor understands and agrees that Contractor is bound by and shall comply with the nondiscrimination mandates of all federal, state, and local statutes, regulations, and ordinances.

**5.5. PERFORMANCE ASSURANCE.** Regardless of the specific Services provided, Contractor shall also maintain any payment and/or performance assurances as may be requested by MCE during the performance of the Services.

**5.6. SAFETY.** At all times during the performance of the Services and as applicable to the Services, Contractor represents, warrants and covenants that it shall:

- a) abide by all applicable federal and state Occupational Safety and Health Administration requirements and other applicable federal, state, and local rules, regulations, codes and ordinances to safeguard persons and property from injury or damage;
- b) abide by all applicable MCE security procedures, rules and regulations and cooperate with MCE security personnel whenever on MCE's property;
- c) abide by MCE's standard safety program contract requirements as may be provided by MCE to Contractor from time to time;
- d) provide all necessary training to its employees, and require Subcontractors to provide training to their employees, about the safety and health rules and standards required under this Agreement;
- e) have in place an effective Injury and Illness Prevention Program that meets the requirements all applicable laws and regulations, including but not limited to Section 6401.7 of the California Labor Code. Additional safety requirements (including MCE's standard safety program contract requirements) are set forth elsewhere in the Agreement, as applicable, and in MCE's safety handbooks as may be provided by MCE to Contractor from time to time;
- f) be responsible for initiating, maintaining, monitoring and supervising all safety precautions and programs in connection with the performance of the Agreement; and
- g) monitor the safety of the job site(s), if applicable, during the performance of all Services to comply with all applicable federal, state, and local laws and to follow safe work practices.

**5.7. BACKGROUND CHECKS.**

- a) Contractor hereby represents, warrants and covenants that any employees, members, officers, contractors, Subcontractors and agents of Contractor (each, a "Contractor Party," and, collectively, the "Contractor Parties") having or requiring access to MCE's Confidential Information and Personal Data ("Covered Personnel") shall have successfully passed background screening on each such individual, prior to receiving access, which screening may include, among other things to the extent applicable to the Services, a screening of the individual's educational background, employment history, valid driver's license, and court record for the seven (7) year period immediately preceding the individual's date of assignment to perform the Services.
- b) INTENTIONALLY OMITTED
- c) To the maximum extent permitted by applicable law, Contractor shall maintain documentation related to such background and drug screening for all Covered Personnel and make it available to MCE for audit if required pursuant to the audit provisions of this Agreement.
- d) INTENTIONALLY OMITTED

**5.8. INTENTIONALLY OMITTED.**

**5.9. QUALITY ASSURANCE PROCEDURES.** Contractor shall comply with the following requirements (the "Quality Assurance Procedures"): (i) industry standard best practices; (ii) procedures that ensure customer satisfaction; and (iii) any additional written direction from MCE.

**5.10. ASSIGNMENT OF PERSONNEL.** The Contractor shall not substitute any personnel for those specifically named in its proposal, if applicable, unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

**5.11. INTENTIONALLY OMITTED.**

**6. INSURANCE:**

At all times during the Term and the performance of the Services, Contractor shall maintain the insurance coverages set forth below. All such insurance coverage shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, directors, officers, and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of Services. Certificate(s) of insurance must be current as of the Effective Date, and shall remain in full force and effect through the Term. If scheduled to lapse prior to termination date, certificate(s) of insurance must be automatically updated before final payment may be made to Contractor. Contractor shall provide MCE 30 days' notice in writing of any cancellation or reduction of coverage. Insurance coverages shall be payable on a per occurrence basis only.

Nothing in this Section 6 shall be construed as a limitation on Contractor's indemnification obligations in Section 17 of this Agreement.

Should Contractor fail to provide and maintain the insurance required by this Agreement, in addition to any other available remedies at law or in equity, MCE may suspend payment to the Contractor for any Services provided during any period of time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required insurance coverage.

**6.1. GENERAL LIABILITY.** The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than **one million dollars (\$1,000,000) with a two million dollars (\$2,000,000)** aggregate limit. "Marin Clean Energy" shall be named as an additional insured on the commercial general liability policy and the certificate of insurance shall include an additional endorsement page (see sample form: ISO - CG 20 10 11 85).

**6.2. AUTO LIABILITY.** Where the Services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said Services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000).

**6.3. WORKERS' COMPENSATION.** The Contractor acknowledges that the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, it shall comply with this requirement and a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of Services.

**6.4. INTENTIONALLY OMITTED**

**6.5. PRIVACY AND CYBERSECURITY LIABILITY.** Contractor shall maintain privacy and cybersecurity liability (including costs arising from data destruction, hacking or intentional breaches, crisis management activity related to data breaches, and legal claims for security breach, privacy violations, and notification costs) of at least \$1,000,000 US per occurrence.

**7. FINANCIAL STATEMENTS:**

If the parties enter into a second agreement, Contractor shall deliver financial statements on an annual basis or as may be reasonably requested by MCE from time to time. Such financial statements or documents shall be for the most recently available audited or reviewed period and prepared in accordance with generally-accepted accounting principles.

**8. SUBCONTRACTING:**

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior, written approval of MCE, except for any subcontract work expressly identified herein in Exhibit A. "Subcontractor" shall mean a third-party to whom Contractor delegates specific deliverables listed in Exhibit A. If Contractor hires a Subcontractor under this Agreement as applicable to the services the Subcontractor provides, Subcontractor shall be bound by all applicable terms and conditions of this Agreement, and Contractor shall ensure the following:

**8.1.** Subcontractor shall comply with the following terms of this Agreement: Sections 9, 10, Exhibit A.

**8.2.** Subcontractor shall provide, maintain and be bound by the representations, warranties and covenants of Contractor contained in Section 5 hereof (as may be modified to be applicable to Subcontractor with respect to Section 5.1(a) hereof) at all times during the Term of such subcontract and its provision of Services.

**8.3.** Subcontractor shall comply with the terms of Section 6 above, including, but not limited to providing and maintaining insurance coverage(s) identical to what is required of Contractor under this Agreement, and shall name MCE as an additional insured under such policies. Contractor shall collect, maintain, and promptly forward to MCE current evidence of such insurance

provided by its Subcontractor. Such evidence of insurance shall be included in the records and is therefore subject to audit as described in Section 9 hereof.

**8.4.** Subcontractor shall be contractually obligated to indemnify the MCE Parties (as defined in Section 17 hereof) pursuant to the terms and conditions of Section 17 hereof.

**8.5.** Subcontractors shall not be permitted to further subcontract any obligations under this Agreement.

Contractor shall be solely responsible for ensuring its Subcontractors' compliance with the terms and conditions of this Agreement made applicable above and to collect and maintain all documentation and current evidence of such compliance. Upon request by MCE, Contractor shall promptly forward to MCE evidence of same. Nothing contained in this Agreement or otherwise stated between the Parties shall create any legal or contractual relationship between MCE and any Subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor's obligation to pay its Subcontractors is an independent obligation from MCE's obligation to make payments to Contractor. As a result, MCE shall have no obligation to pay or to enforce the payment of any monies to any Subcontractor.

## **9. RETENTION OF RECORDS AND AUDIT PROVISION:**

Contractor shall keep and maintain on a current basis full and complete records and documentation pertaining to this Agreement and the Services, whether stored electronically or otherwise, including, but not limited to, valuation records, accounting records, documents supporting all invoices, employees' time sheets, receipts and expenses, and all customer documentation and correspondence (the "Records"). MCE shall have the right, during regular business hours, to review and audit all Records during the Term and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written request from MCE. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

## **10. DATA, CONFIDENTIALITY AND INTELLECTUAL PROPERTY:**

**10.1. DEFINITION OF "MCE DATA".** "MCE Data" shall mean all data or information provided by or on behalf of MCE, including but not limited to, customer Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any customers; all data or information input, information systems and technology, software, methods, forms, manuals, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of MCE to Contractor as MCE may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Contractor. MCE Data shall also include all data and materials provided by or made available to Contractor by MCE's licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between MCE and their licensors. MCE Data also includes any data created as a result of MCE's use of the Contractor's Services.

"Confidential Information" under this Agreement shall have the same meaning as defined in the Marin Clean Energy Non-Disclosure Agreement between the Parties dated **April 24, 2023**.

**10.2. DEFINITION OF "PERSONAL INFORMATION".** "Personal Information" includes but is not limited to the following: personal and entity names, e-mail addresses, addresses, phone numbers, any other public or privately-issued identification numbers, IP addresses, MAC addresses, and any other digital identifiers associated with entities, geographic locations, users, persons, machines or networks. Contractor shall comply with all applicable federal, state and local laws, rules, and regulations related to the use, collection, storage, and transmission of Personal Information.

**10.3. MCE DATA SECURITY MEASURES.** Prior to Contractor receiving any MCE Data, Contractor shall comply, and at all times thereafter continue to comply, in compliance with MCE's Data security policies set forth in MCE Policy 009 (available upon request) and MCE's Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy ("Security Measures") and pursuant to MCE's Confidentiality provisions in Section 5 of the Marin Clean Energy Non-Disclosure Agreement between the parties dated **April 24, 2023**, and as set forth in MCE Policy 001 - Confidentiality. MCE's Security Measures and Confidentiality provisions require Contractor to adhere to reasonable administrative, technical, and physical safeguard protocols to protect the MCE's Data from unauthorized handling, access, destruction, use, modification or disclosure.

**10.4. CONTRACTOR DATA SECURITY MEASURES.** Additionally, Contractor shall, at its own expense, adopt and continuously implement, maintain and enforce reasonable technical and organizational measures consistent with the sensitivity of Personal Information and Confidential Information including, but not limited to, measures designed to (1) prevent unauthorized access

to, and otherwise physically and electronically protect, the Personal Information and Confidential Information, and (2) protect MCE content and MCE Data against unauthorized or unlawful access, disclosure, alteration, loss, or destruction.

**10.5. RETURN OF MCE DATA.** Promptly after this Agreement terminates unless the parties enter into a second agreement, (i) Contractor shall securely destroy all MCE Data in its possession and certify the secure destruction in writing to MCE, and (ii) each Party shall return (or if requested by the disclosing Party, destroy) all other Confidential Information and property of the other (if any), provided that Contractor's attorney shall be permitted to retain a copy of such records or materials solely for legal purposes.

**10.6. OWNERSHIP AND USE RIGHTS.**

- a) **MCE Data.** Unless otherwise expressly agreed to in writing by the Parties, MCE shall retain all of its rights, title and interest in MCE's Data.
- b) **Intellectual Property.**
  - 1. **Work Product.** Unless otherwise expressly agreed to in writing by the Parties and subject to 10.6(b)(2) below, any and all deliverables, materials, information, or other intellectual property created, prepared, accumulated or developed by Contractor or any Contractor Party for MCE under this Agreement ("Work Product"), including finished and unfinished inventions, processes, templates, documents, drawings, designs, calculations, valuations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual materials, data, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith, and including any intellectual property therein, shall be owned by MCE. Work Product shall not include any modifications to any part of the Contractor's intellectual property, software, algorithm, vehicle/charger application programming interfaces ("APIs"), or mobile app. MCE shall have the exclusive right to use the Work Product in its sole discretion and without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide Work Product to MCE or to any party MCE may designate upon written request. Contractor may keep one file reference copy of Work Product prepared for MCE solely for legal purposes and if otherwise agreed to in writing by MCE. In addition, Contractor may keep one copy of Work Product if otherwise agreed to in writing by MCE. The Work Product shall be owned by MCE upon its creation. Contractor agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE's ownership in the Intellectual Property.
  - 2. **Contractor's Pre-Existing Materials.** To the extent the Work Product includes Contractor's Pre-Existing Materials, Contractor hereby grants MCE on behalf of its customers and the CPUC for governmental and regulatory purposes a non-exclusive, worldwide, unlimited, fully paid, right to access and use and sublicense others to use the Pre-Existing Materials for its and their business purposes during the Term of this Agreement. MCE will not resell, modify, decompile, disassemble, or reverse engineer the Pre-Existing Materials except as otherwise expressly authorized under this Agreement or permitted by Law; MCE will not remove any proprietary marks or confidentiality notices appearing on the Pre-Existing Materials. Unless otherwise expressly agreed to by the Parties, Contractor shall retain all of its rights, title and interest in Contractor's Pre-Existing Materials. Any and all claims to Contractor's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Intellectual Property must be expressly disclosed to MCE prior to performing any Services under this Agreement. For the avoidance of doubt, "Contractor's Pre-Existing Materials" means Contractor's pre-existing intellectual property and materials developed prior to and/or independently of this Agreement, and includes Contractor's cloud-based software solutions, mobile application and designs, and APIs used by Contractor in the performance of Services.
- c) The intellectual property of the software, algorithm, vehicle and charger APIs, and mobile app provided by the Contractor (other than open-source software and third-party software) is, and shall remain, the property of the Contractor, and the Contractor reserves the right to grant a license to use its software to any other party or parties. MCE acquires no rights in or to the Contractor's software and accompanying documentation other than those expressly granted by this Agreement except MCE shall own any data or results from MCE's use of the software. MCE shall not permit any third parties (apart from its employees, including fellows and/or interns, and customers) to access the Contractor's software and/or Services without its prior written consent.
- d) **APIs.** MCE acknowledges that the Contractor's Services are partly dependent on open-source software and third-party APIs made available from electric vehicle and charger manufacturers. MCE acknowledges that this open-source software is provided 'as is' and the Contractor makes no representation or warranty that third-party APIs will be continuously available throughout the term of this Agreement.

**10.7. EQUITABLE RELIEF.** Each Party acknowledges that a breach of this Section 10 would cause irreparable harm and significant damages to the other Party, the degree of which may be difficult to ascertain. Accordingly, each Party agrees that MCE shall have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of MCE Data or Personal Information, in addition to any other rights and remedies that it may have at law or otherwise; and Contractor shall have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of Contractor's Pre-Existing Materials, in addition to any other rights and remedies that it may have at law or otherwise.

**11. FORCE MAJEURE:**

A Party shall be excused for failure to perform its obligations under this Agreement if such obligations are prevented by an event of Force Majeure (as defined below), but only for so long as and to the extent that the Party claiming Force Majeure ("Claiming Party") is actually so prevented from performing and provided that (a) the Claiming Party gives written notice and full particulars of such

Force Majeure to the other Party (the "Affected Party") promptly after the occurrence of the event relied on, (b) such notice includes an estimate of the expected duration and probable impact on the performance of the Claiming Party's obligations under this Agreement, (c) the Claiming Party furnishes timely regular reports regarding the status of the Force Majeure, including updates with respect to the data included in Section 10 above during the continuation of the delay in the Claiming Party's performance, (d) the suspension of such obligations sought by Claiming Party is of no greater scope and of no longer duration than is required by the Force Majeure, (e) no obligation or liability of either Party which became due or arose before the occurrence of the event causing the suspension of performance shall be excused as a result of the Force Majeure; (f) the Claiming Party shall exercise commercially reasonable efforts to mitigate or limit the interference, impairment and losses to the Affected Party; (g) when the Claiming Party is able to resume performance of the affected obligations under this Agreement, the Claiming Party shall give the Affected Party written notice to that effect and promptly shall resume performance under this Agreement. "Force Majeure" shall mean acts of God such as floods, earthquakes, fires, orders or decrees by a governmental authority (including "shelter-in-place" orders), civil or military disturbances, wars, riots, terrorism or threats of terrorism, utility power shutoffs, strikes, labor disputes, pandemic, or other forces over which the responsible Party has no control and which are not caused by an act or omission of such Party.

## **12. TERMINATION:**

- 12.1.** If the Contractor fails to provide in any manner the Services required under this Agreement, otherwise fails to comply with the terms of this Agreement, violates any Applicable Law, makes an assignment of any general arrangement for the benefit of creditors, files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it, otherwise becomes bankrupt or insolvent (however evidenced), or becomes unable to pay its debts as they fall due, then MCE may terminate this Agreement by giving five (5) business days' written notice to Contractor.
- 12.2.** Either Party hereto may terminate this Agreement for any reason by giving thirty (30) calendar days' written notice to the other Party. Notice of termination shall be by written notice to the other Party and be sent by registered mail or by email to the email address listed in Section 19.
- 12.3.** In the event of termination not the fault of the Contractor, the Contractor shall be paid for Services performed up to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s). Notwithstanding anything contained in this Section 12, in no event shall MCE be liable for lost or anticipated profits or overhead on uncompleted portions of the Agreement. Contractor shall not enter into any agreement, commitments or subcontracts that would incur significant cancellation or termination costs without prior written approval of MCE, and such written approval shall be a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12. Also, as a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12, Contractor shall have delivered to MCE any and all Work Product (as defined in Section 10.6(b)) prepared for MCE before the effective date of such termination.
- 12.4.** MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.
- 12.5.** The Contractor may terminate this Agreement with immediate effect if MCE fails to make payment within 30 calendar days' written notice of arrears which have accumulated to a value greater than or equal to \$20,000 worth of previously-raised and overdue invoices.
- 12.6.** Without limiting the foregoing, if either Party's activities hereunder become subject to law or regulation of any kind, which renders the activity illegal, unenforceable, or which imposes additional costs on such Party for which the parties cannot mutually agree upon an acceptable price modification, then such Party shall at such time have the right to terminate this Agreement upon written notice to the other Party with respect to the illegal, unenforceable, or uneconomic provisions only, and the remaining provisions will remain in full force and effect.
- 12.7.** Upon termination of this Agreement for any reason, Contractor shall and shall cause each Contractor Party to bring the Services to an orderly conclusion as directed by MCE and shall return all MCE Data (as defined in Section 10.1 above) and Intellectual Property to MCE.
- 12.8.** Notwithstanding the foregoing, this Agreement shall be subject to changes, modifications, or termination by order or directive of the California Public Utilities Commission ("CPUC"). The CPUC may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case MCE shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such order or directive.
- 12.9.** Notwithstanding any provision herein to the contrary, Sections 2, 3, 8.4, 9, 10, 12, 15, 16, 17, 18, 19, 20, 21, 22, 24 and Exhibit B of this Agreement shall survive the termination or expiration of this Agreement.

**13. ASSIGNMENT:**

The rights, responsibilities, and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of MCE.

**14. AMENDMENT; NO WAIVER:**

This Agreement may be amended or modified only by written agreement of the Parties. Failure of either Party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

**15. DISPUTES:**

Either Party may give the other Party written notice of any dispute which has not been resolved at a working level. Any dispute that cannot be resolved between Contractor's contract representative and MCE's contract representative by good faith negotiation efforts shall be referred to Legal Counsel of MCE and an officer of Contractor for resolution. Within 20 calendar days after delivery of such notice, such persons shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If MCE and Contractor cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days), MCE and Contractor shall have the right to pursue all rights and remedies that may be available at law or in equity. All negotiations and any mediation agreed to by the Parties are confidential and shall be treated as compromise and settlement negotiations, to which Section 1119 of the California Evidence Code shall apply, and Section 1119 is incorporated herein by reference.

**16. JURISDICTION AND VENUE:**

This Agreement shall be construed in accordance with the laws of the State of California and the Parties hereto agree that venue shall be in Marin County, California.

**17. INDEMNIFICATION:**

To the fullest extent permitted by Applicable Law, Contractor shall indemnify, defend, and hold MCE and its employees, officers, directors, representatives, and agents ("MCE Parties"), harmless from and against any and all actions, claims, liabilities, losses, costs, damages, and expenses (including, but not limited to, litigation costs, attorney's fees and costs, physical damage to or loss of tangible property, and injury or death of any person) arising out of, resulting from, or caused by: a) the negligence, recklessness, intentional misconduct, fraud of all Contractor Parties; b) the failure of a Contractor Party to comply with the provisions of this Agreement, including the failure to pay Participants (defined below in Exhibit A) the Participant's expected incentive amounts, or Applicable Law., or Applicable Law; c) any defect in design, workmanship, or materials carried out or employed by any Contractor Party; d) breach of any third party intellectual property rights; e) breach of applicable laws; or f) breach of privacy, security or confidentiality obligations. Except for claims arising from Contractor's breach of confidentiality with MCE Data, Contractor's liability to MCE shall not exceed the maximum value of this Agreement listed in Section 3.

**18. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:**

MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.). Pursuant to MCE's Joint Powers Agreement, MCE is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations, and liabilities accruing and arising out of this Agreement. No Contractor Party shall have rights and nor shall any Contractor Party make any claims, take any actions, or assert any remedies against any of MCE's constituent members in connection with this Agreement.

**19. INVOICES; NOTICES:**

This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted by email to:

Email Address:	invoices@mcecleanenergy.org
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All other notices shall be given to MCE at the following location:

Contract Manager:	Troy Nordquist
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MCE Address:	1125 Tamalpais Avenue San Rafael, CA 94901
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Email Address:	contracts@mcecleanenergy.org
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Telephone No.:	(925) 378-6767
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Notices shall be given to Contractor at the following address:

Contractor:	Nick Woolley
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Address:	2100 Geng Road, Suite 210, Palo Alto, CA 94303
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Email Address:	nick.woolley@ev.energy
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Telephone No.:	+44 7940 712031
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**20. ENTIRE AGREEMENT; ACKNOWLEDGMENT OF EXHIBITS:**

This Agreement along with the attached Exhibits marked below constitutes the entire Agreement between the Parties. In the event of a conflict between the terms of this Agreement and the terms in any of the following Exhibits, the terms in this Agreement shall govern.

	<input checked="" type="checkbox"/>	<u>Check applicable Exhibits</u>	<u>CONTRACTOR'S INITIALS</u>	<u>MCE'S INITIALS</u>
<u>EXHIBIT A.</u>	X	Scope of Services		
<u>EXHIBIT B.</u>	X	Fees and Payment		
<u>EXHIBIT C.</u>	X	Service Levels		

**21. SEVERABILITY:**

Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provision, will continue in full force and effect and will in no way be impaired or invalidated.

**22. INDEPENDENT CONTRACTOR:**

Contractor is an independent contractor to MCE hereunder. Nothing in this Agreement shall establish any relationship of partnership, joint venture, employment or franchise between MCE and any Contractor Party. Neither MCE nor any Contractor Party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided for herein.

**23. TIME:**

Time is of the essence in this Agreement and each and all of its provisions.

**24. THIRD PARTY BENEFICIARIES:**

The Parties agree that there are no third-party beneficiaries to this Agreement either express or implied.

**25. FURTHER ACTIONS:**

The Parties agree to take all such further actions and to execute such additional documents as may be reasonably necessary to effectuate the purposes of this Agreement.

**26. PREPARATION OF AGREEMENT:**

This Agreement was prepared jointly by the Parties, each Party having had access to advice of its own counsel, and not by either Party to the exclusion of the other Party, and this Agreement shall not be construed against either Party as a result of the manner in which this Agreement was prepared, negotiated or executed.

**27. DIVERSITY SURVEY:**

Pursuant to Senate Bill 255 which amends Section 366.2 of the California Public Utilities Code, MCE is required to submit to the California Public Utilities Commission an annual report regarding its procurement from women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises ("WMDVLGBTBE"). Consistent with these requirements, Contractor agrees to provide information to MCE regarding Contractor's status as a WMDVLGBTBE and any engagement of WMDVLGBTBEs in its provision of Services under this Agreement. Concurrently with the execution of this Agreement, Contractor agrees to complete and deliver MCE's Supplier Diversity Survey, found at the following link: <https://form.asana.com/?k=jSGYk4x3sf2dHfSzywc2fg&d=163567039999692> (the "Diversity Survey"). Because MCE is required to submit annual reports and/or because the Diversity Survey may be updated or revised during the term of this Agreement, Contractor agrees to complete and deliver the Diversity Survey, an updated or revised version of the Diversity Survey or a similar survey at the reasonable request of MCE and to otherwise reasonably cooperate with MCE to provide the information described above. Contractor shall provide all such information in the timeframe reasonably requested by MCE.

**28. COUNTERPARTS:**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first above written.

**APPROVED BY**

**MARIN CLEAN ENERGY:**

**CONTRACTOR:**

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

By:

Chairperson

Date:

**MODIFICATIONS TO STANDARD SHORT FORM**

**Standard Short Form Content Has Been Modified**

**List sections affected: 1, 5.5, 5.6, 5.7, 5.8, 5.9, 5.11, 6, 7, 8, 10.1, 10.5, 10.6, 11, 12.5, and 17.**



**Approved by MCE Counsel:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## EXHIBIT A SCOPE OF SERVICES

Contractor shall provide the following Services under the Agreement as requested and directed by MCE Customer Programs staff, up to the maximum time/fees allowed under this Agreement:

Contractor will continue to scale the MCE Sync Program ("MCE Sync" or "Program"), by providing the following tasks:

1. Managed EV Charging and Program Management;
2. Marketing and MCE Sync App Participant Enrollment; and
3. Enhancements to the MCE Sync App and Program.

### Definitions

1. Participants
  - a. "Participant" - a unique MCE Sync user account.
  - b. "Eligible New Participant" - a Participant that has successfully connected an eligible EV or charger to Contractor's platform, completed at least one charging session, and has been verified as an MCE customer.
  - c. "Eligible Participant" - a Participant that has already received the Eligible New Participant incentive and has participated in at least 2 low carbon or other market/demand response events in the calendar month.
  - d. "Participant EV" - a compatible EV (or non-compatible EV paired with a compatible charger) connected to Contractor's platform.
  - e. "Active Vehicle" - a Participant EV that has completed at least one charging session within the previous 180 days.
2. Incentives
  - a. "One-Time Enrollment Incentive" - a \$50 incentive paid following the first calendar month in which a Participant is deemed an Eligible New Participant.
  - b. "Participation Incentives" - \$10 monthly incentives that are paid out to Eligible Participants who are plugged in and allow Contractor to optimize EV charging during at least 2 low carbon or other market/demand response events per calendar month.

### Task 1. For Managed EV Charging and Program Management, Contractor will:

- Enroll Participants who, through enrollment, will be provided managed EV charging;
- Aim to enroll Participants in the PeakFLEX market;
- Verify new Participants are MCE customers, calculate and administer one-time enrollment incentives to Eligible New Participants and ongoing participation incentives to Eligible Participants through payment platforms including but not limited to PayPal;
- In accordance with service level-requirements (see Exhibit C), provide front-line customer service, complaint handling, issue resolution, and technical assistance for Participants, and maintain the Frequently Asked Questions (FAQs) and website for Participant engagement;
- Administer at-home charger rebates for compatible chargers to Participants, as directed by MCE
- Run, maintain, and continuously improve the Contractor platform, ensuring compliance with applicable cybersecurity and data privacy laws;
- Continuously improve the Contractor charging algorithm, building on monthly results and learnings to further improve performance;
- Provide MCE with access to Contractor's back-end portal, with visual and downloadable data on the following: Participant enrollment, total EV load and load shifting performance, past and forecasted energy consumption, carbon intensity, charging locations, Participant charging behavior, Low Carbon Fuel Standard credit data, and Demand Response event participation; and
- Deliver twice-monthly check-ins and deliver monthly Results & Impacts report to MCE. The Results & Impacts report will be delivered to MCE no later than the 5th business day for reporting of the month prior.

### Task 2. For Marketing and MCE Sync App Participant Enrollment, Contractor will work with MCE to:

- Maintain a multi-channel marketing & customer outreach plan with the aim of enrolling a total of 4,000 Participant EVs by May 31, 2024;
- Develop bi-annual marketing plans, and quarterly marketing audits;
- Execute marketing, outreach, and enrollment plan;
- Develop marketing collateral to recruit Participants for the summer reliability season, identifying optimal Participant profiles, and on-boarding Participants; and
- Work with MCE's Marketing Team lead to deliver marketing campaigns; and
- All materials developed by Contractor in Phase 2 will be the property of MCE for continued marketing efforts of MCE and MCE Sync.

- All Task 2 deliverables subject to review and approval by MCE Marketing Team

**Task 3. For Enhancements to the MCE Sync App and Program, Contractor will:**

- Provide front-end and back-end enhancements to the MCE Sync software platform in accordance with listed services in Exhibit B; and
- Implement additional vehicle and charger integrations to the MCE Sync software platform to enable a wider audience to participate in the Program. Contractor will coordinate with MCE on fast tracking integrations, as directed by MCE.

The success of the continued scaling of the Program will require MCE to fulfill its commitments and coordinate with external parties, including:

- Provide Contractor with a list of all known EV customers and their contact information and a monthly list of new EV tariff customers, as well as timely input and sign-off on marketing materials to support recruitment efforts;
- Provide Contractor with routine and detailed Google Analytics reporting, or provide direct access to a Google Analytics dashboard for the MCE Sync webpage.
- Provide Contractor with customer-level account information in a timely manner to support PeakFlex Market enrollment and verify Participant status following on-boarding onto the MCE Sync app;
- Offer and administer a \$50 One-Time Enrollment Incentive to Eligible New Participants, as well as \$10/month Participation Incentives for all Eligible Participants; and
- Ensure MCE and its partners provide the Contractor with the needed data/API feeds for the PeakFlex market and any other desired grid/market feeds;

By maximizing residential customer enrollment and optimizing Participants' EV charging according to seasonal criteria, Contractor will:

- Aim for 5,000 total Participant EVs by May 31, 2024;
- Work with MCE to maximize Participant retention and participation in the Program through e.g., ongoing education about the Program's benefit to Participants, to the power grid, and to society; periodic scheduled in-app and email outreach and engagements, as may be identified by MCE and Contractor staff; and continuous improvements and feature enhancements to the MCE Sync app; and
- Include PeakFlex Market signals for EV charging during the summer months (June-September), time-of-use/carbon-intensity signals during other months, and event-based signals as directed by MCE.

EVs and home chargers eligible for MCE Sync as of Agreement execution date include:

- BMW i3, i4, iX, 3 series, 5 series, 7 series, X3, X5
- Tesla Models S/X/Y/3
- Volkswagen e-Golf
- Chevy Bolt EUV/Bolt/Volt
- Ford Mach-E Mustang/F-150 Lightning
- ChargePoint Home/ Home Flex chargers
- SmartenIt SmartElek charging cable (Contractor compatible version)
- Siemens VersiCharge 3<sup>rd</sup> generation (subject to market availability)

Contractor will integrate additional EVs and home chargers, as identified by MCE, into the MCE Sync software when Contractor informs MCE that additional integration is possible.

Assumptions and Understandings:

- Contractor may participate and be the recipient of PeakFlex payments as an aggregator in MCE's PeakFlex market.
- All marketing work provided by Contractor is subject to MCE Public Affairs Team's approval.
- Both Parties shall comply at all times during the Term with the following MCE service level agreement ("SLA") that provides MCE's expectations for customer interactions by Contractor:
  - Contractor shall keep a 99% platform uptime.
  - Contractor and all subcontractors responding to, or engaging directly with, MCE customers shall respond to direct customer inquiries no later than within 3 business days after the inquiry is received. Unless otherwise agreed to, Contractor and subcontractors are to provide one option for customer contact (email). Unless otherwise agreed to, the Contractor shall provide MCE with a process to document customer issues, escalations, and resolutions.
  - MCE to review and approve the Marketing, Education & Outreach (ME&O) Plan.
  - MCE to review and approve all branded customer facing materials (digital and physical content) before Contractor and/or subcontractor uses and distributes them.
  - Contractor to provide to MCE monthly reports which will include lead generation, outreach status, Customer Information updates and any customer complaints, feedback, and escalations.

- Contractor shall comply with Contractor's standard service levels (included as Exhibit C) including 99% platform uptime and response to inbound Participant support queries within 3 business days.

MCE understands that the success of the MCE Sync Program depends on MCE's ability to fulfill its commitments, namely:

- Maintain its Apple App Store and Google Play Store marketplaces and provide Contractor with all resources and approvals necessary to host the MCE Sync app and issue app updates on its behalf;
- Provide Contractor with timely requirements, feedback and sign-off on MCE Sync updates;
- Provide Contractor with updated MCE tariff prices and structures and the customer-level account information necessary (Name, Email Address, Rate Plan, Verification of supply status) to complete the above tasks; and
- Provide Contractor with a list of eligible EV customers and their contact information, as well as timely sign-off by MCE Public Affairs team on marketing materials, to support recruitment efforts.

MCE acknowledges that Contractor's connectivity to the above pieces of hardware is dependent on Original Equipment Manufacturer server uptime, Participant's home WiFi connectivity and Participant's subscription to any required vehicle telematics data plans.

## **EXHIBIT B**

### **FEES AND PAYMENT SCHEDULE**

For Services provided under this Agreement, MCE shall pay Contractor in accordance with the amount(s) and the payment schedule as specified below:

**Task 1: Managed EV Charging and Program Management Monthly Costs; Not to Exceed \$636,900**

- Managed EV charging, front-line Participant support, back-end Participant verification, Participant incentive calculation, regular platform updates, Program management and monthly data/performance reporting:
  - Up to 1,000 active vehicles (total \$17,500/month)
  - Each additional tranche of 500 active vehicles, triggered by enrollment of the 1,001<sup>st</sup> active vehicle (an additional \$1,875/month)
- Financial incentive administration to Participants participating in low carbon events, or other market/demand-response events:
  - Invoiced to MCE at cost each month (including 5% processing fees).
- Administer at-home charger rebates for compatible chargers to Participants, as directed by MCE

**Task 2: Marketing and MCE Sync App Participant Enrollment, Not to Exceed \$120,000**

- Marketing planning, execution, and Participant recruitment services (\$10,000/month)
  - Marketing services to be provided for the duration of the contract
  - Contractor to cover design and labor costs for digital campaigns
  - MCE to cover all other marketing costs, including but not limited to print, postage, and advertising placement expenses

**Task 3: Enhancements to the MCE Sync App and Program, Not to Exceed \$125,000**

- Enhancements to the MCE Sync app & re-publishing to public app stores (\$75,000)
  - Automated customer enrollment process into the PeakFlex Market (\$25,000)
  - Enhanced in-app and email notifications for low carbon events, as identified by MCE or Contractor (\$50,000)
    - Examples of notifications that could be included:
      - In-app notification inbox
      - Multi-channel alerts
      - Event opt-in button included in notification
- Fast-tracked vehicle or charger brand integrations as identified by Contractor (\$25,000 per integration)
  - Examples of additional products that could be added through integrations:
    - Enel X chargers
    - Toyota vehicles

Upon written approval of MCE, funds may shift between the Tasks to accomplish the scope of services outlined in Exhibit A. Contractor will provide an itemized invoice to MCE Customer Programs staff with information on the deliverables it has completed in the previous calendar month. In no event shall the total cost to MCE for the Services provided herein exceed the **maximum sum of \$881,900** for the term of the Agreement.

**EXHIBIT C**  
**SERVICE LEVELS**

a) Availability Service Level.

1) Definitions.

(a) "Maintenance Window" shall mean the total minutes in the reporting month represented by the mutually agreed day(s) and time(s) during which Service Provider shall maintain the Services.

(b) "Scheduled Downtime" shall mean the total minutes in the reporting months represented by the Maintenance Window.

(c) "Scheduled Uptime" shall mean the total minutes in the reporting month less the total minutes represented by the Scheduled Downtime.

2) Service Level Standard. Services will be available to Authorized Users for normal use 99% of the Scheduled Uptime.

b) Technical Support Problem Response and Resolution Service Level.

1) Service Level Standard. The Service Provider will respond to two categories of problems associated with delivery of the Services:

i) Problems that shall be investigated and resolved within 3 working days if the problem prevents >25% of Authorized Users from accessing the Services to charge their vehicle as required; and

ii) Problems that shall be investigated and resolved within 15 working days if >25% of Authorized Users are able to access the Services to charge their vehicle as required but are unable to access a specific functionality delivered by the Service Provider.



May 3, 2023

TO: MCE Executive Committee

FROM: Justin Kudo, Senior Strategic Analysis and Rates Manager  
Sabrinna Soldavini, Senior Policy Analyst

RE: Interim Load Management Standards Compliance Plan  
(Agenda Item #06)

ATTACHMENTS: A. MCE Interim Load Management Standards Compliance Plan  
B. California Energy Commission Adopted Load Management Standards  
C. California Community Choice Association Comments in Load Management Rulemaking

Dear Executive Committee:

**Summary:**

On January 25, 2023, the California Energy Commission (CEC) modified its Load Management Standards (LMS)<sup>1</sup> regulations requiring Load Serving Entities (LSEs)<sup>2</sup> to develop and publish hourly or sub-hourly rates and programs that help to: (1) reduce peak electricity demand; (2) balance electricity supply and demand to support grid reliability; and (3) provide clean and affordable electricity services to Californians. The compliance schedule includes a July 1, 2023 deadline to upload and maintain all existing time-dependent rates to the CEC's Market Informed Demand Automation Server (MIDAS) database. However, implementation by the upcoming deadline will not be possible for most parties due to technical obstacles and limitations in the MIDAS system. As a result, staff has prepared an Interim LMS Compliance Plan (Interim Plan) that includes a phased compliance approach.

Background

The CEC-approved LMS regulations include the following compliance schedule:

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<sup>1</sup> See Attachment B, Adopted Load Management Standards for a full copy of CEC adopted regulations.

<sup>2</sup> Including Community Choice Aggregators, publicly-owned utilities, and investor-owned utilities.

1. July 1, 2023 - Upload and maintain all existing time-dependent rates to the CEC's MIDAS database;
2. April 1, 2024 - Submit a plan to the MCE Board to develop new time-dependent rates that vary at least hourly starting in 2025;
3. October 1, 2024 - Submit a list of load flexibility programs deemed cost effective by MCE to the CEC;
4. July 1, 2025 - Bring at least one new hourly or sub hourly rate to MCE's Board for approval;
5. August 1, 2028 - Offer all customers voluntary participation in either an hourly or sub-hourly rate, if such a rate is approved by the Board, or a cost-effective program (as outlined in requirement 3 above); and
6. Conduct a public information program to inform and educate impacted customers.<sup>3</sup>

The CEC does not have the authority to require MCE to comply with the LMS. However, because the LMS' goals align with MCE rate setting principles, MCE plans to voluntarily comply with the LMS to the extent reasonable. As such, at the CEC's request, staff has prepared an Interim LMS Compliance Plan (Interim Plan) which includes a request to delay the July 1, 2023 deadline for uploading rates to MIDAS to: (1) allow the CEC to finish development of MIDAS and finalize its compliance requirements; and (2) provide a reasonable timeline for MCE to develop a system meeting those requirements.

#### MCE Interim LMS Plan

Various stakeholders from across the state, including CCAs, IOUs, Publicly Owned Utilities (POUs), and energy service providers, have identified significant technical obstacles and limitations in the MIDAS system, and more significantly that certain requirements are neither technologically feasible nor cost effective at this time. Those obstacles include, but are not limited to the following, and are discussed in greater detail in the Interim Plan:

1. *A lack of final, standardized protocols for using MIDAS including how rates should be uploaded, and sufficient time to develop systems to meet those requirements.*

MCE staff expects to need nine to twelve months to implement and test the systems once the technical requirements are finalized; the current deadline for LMS compliance is in less than two months.

2. *The complexity of uploading numerous rate structures and their variations to MIDAS.*

MCE believes it should only be responsible for uploading and maintaining its own generation rates, not PG&E's. The CEC disagrees and currently plans to

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<sup>3</sup> Note, this requirement does not have a timeline associated with it in the adopted LMS.



require MCE to upload and maintain PG&E's rates as well. If required to upload both, the number and complexity of rate uploads would significantly increase, potentially making compliance technologically infeasible and not cost effective. Additionally, stakeholders have expressed concerns about whether the MIDAS system can handle the volume of rate uploads during rate-setting periods.

3. *A lack of cost recovery for CCAs provided in the LMS regulations.*

IOUs, such as PG&E, can recover LMS implementation costs through rates approved by the California Public Utilities, but there is no comparable mechanism for CCAs. Any costs for MCE to implement the standards must come from MCE customers – potentially increasing MCE rates.

Summary of Interim LMS Plan

Staff is requesting the Executive Committee approve the Interim LMS Plan that would implement a phased compliance plan for uploading MCE's rates to MIDAS to (1) provide a potentially cost-effective and technologically feasible approach; and (2) mitigate risk of non-compliance.<sup>4</sup>

The Interim LMS Plan proposes a phased compliance by which MCE will:

1. Upload at least one existing time-of-use rate to MIDAS by July 1, 2023.
  - a. MCE will, at minimum, upload its residential time-of-use (TOU) rate, based on its Light Green service option covering:
    - i. 84 percent of residential MCE customer accounts on a TOU rate; and
    - ii. 73 percent of all MCE customer accounts on a TOU rate.
2. Upload all MCE time-dependent electric generation rates and required rate modifiers to the MIDAS database, no later than twelve months after all requirements are finalized, if it is cost-effective and technologically feasible.

**Fiscal Impacts:**

The proposed Interim Plan and phased compliance with the LMS regulations are not expected to have any significant immediate fiscal impacts, aside from the cost of staff time to upload at least one rate by July 1, 2023. There will be costs associated with developing systems and processes that can automate the uploading of rates to the MIDAS system. At this time, staff cannot provide a precise estimate of these costs, as they will depend on the scope of work required by the CEC.

**Recommendation:**

Approve MCE's Interim LMS Compliance Plan.

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<sup>4</sup> Attachment A - MCE Interim Load Management Standards Compliance Plan.

## **MCE INTERIM LOAD MANAGEMENT STANDARDS COMPLIANCE PLAN**

### **I. PURPOSE**

In Docket Number 21-OIR-03 the California Energy Commission (CEC) adopted Load Management Standards (LMS) (CCR Title 20 §§ 1621-1625) applicable to Marin Clean Energy (MCE). The purpose of this Interim Load Management Standard Compliance Plan (Interim Plan) plan is to identify the steps and activities that MCE plans to undertake before a Final Compliance Plan is submitted to the MCE Board of Directors (Board) for approval in April 2024. This Interim Plan is only intended to: (1) summarize MCE's findings that complying with Section 1623.1(c) of the LMS by the July 1, 2023 deadline is neither technologically feasible nor cost-effective; and (2) adopt a modified, phased, interim compliance plan.

### **II. MCE BOARD AUTHORITY**

- a. Nothing in this plan overrides or supersedes MCE's Board's sole authority as the governing and rate-making body of MCE.
  - i. MCE does not believe that the CEC has the authority to require MCE to comply with the LMS. However, because the LMS' goals align with MCE rate setting principles, MCE plans to voluntarily comply with the LMS to the extent reasonable and practicable. Nothing in this plan implies any jurisdictional authority of the CEC over MCE's rates and or programs.
- b. As allowed by statute and in the CEC regulations the Board has the authority, and is allowed, to approve a plan that modifies or delays compliance if implementation of the LMS requirements would:
  - i. Impose extreme hardship on MCE;
  - ii. Reduce system reliability or efficiency; and/or
  - iii. Not be technologically feasible or cost-effective.

### **III. BOARD APPROVAL**

- a. This Interim Plan only pertains to MCE's compliance with Section 1623.1(c) of the Load Management Standards.
  - i. As required by Section 1623.1(a)(1) of the LMS, MCE will present to the Board for approval a separate Final Compliance Plan consistent with Section 1623.1 no later than April 1, 2024.
- b. The Executive Committee of the Board, under delegated authority of the full Board, shall adopt the Interim Plan in a publicly noticed meeting no later than 60 days after submission to the committee.
- c. No later than 30 days after approval, MCE shall transmit the Interim Plan to the CEC.

#### IV. Compliance with Section 1623.1(c) is Not Technologically Feasible or Cost-Effective

In late 2022, CEC Staff began to hold LMS working group meetings with stakeholders focused on implementing the LMS beginning with defining the requirements and protocols for MIDAS (and compliance with the July 1, 2023 rate upload requirement).

Unfortunately, despite extensive good faith efforts by MCE, CEC Staff and other engaged stakeholders, MCE has determined that full compliance with the July 1, 2023 requirement is technologically infeasible and not cost-effective for numerous reasons, including but not limited to, the following:

1. *A lack of final, standardized protocols for using MIDAS including how rates should be uploaded, and sufficient time to develop systems to meet those requirements.*

The CEC has not provided final guidance or otherwise identified a standard of what is compliant on the format and required components within uploaded rates. MCE requires final technical requirements to ensure resources invested in developing a platform to submit rates to MIDAS are cost-effective. MCE staff also expects to need at least nine months, and up to twelve months, to implement and test the systems once the technical requirements and standard protocols are finalized; the current deadline for LMS compliance is in less than two months.

2. *The complexity of uploading numerous rate structures and their variations to MIDAS.*

MCE interprets the regulations intend for Community Choice Aggregators (CCAs) to upload and maintain their own generation rates. MCE should not and cannot take responsibility for maintaining an accurate database of PG&E rates. However, the CEC is currently interpreting Section 1623.1(c) of the LMS regulations to require that MCE combine Pacific Gas & Electric (PG&E) and MCE rates prior to upload to MIDAS. That is, the CEC has interpreted that the regulations require MCE to upload and maintain not just MCE's generation rate components to MIDAS but also all of PG&E's time-varying rate components.

MCE disagrees with any interpretation that it must include PG&E's distribution and transmission rate components to meet the requirements of the regulations. Section 1623.1 is written for both the Large Publicly Owned Utilities (POUs) and Large CCAs, and clearly states that the respective Load Serving Entities (LSEs) are responsible only for uploading its own rates as applicable to their customers. As CCAs do not set or have their own distribution and transmission rate components, those rate components clearly fall outside the scope of the regulations for Large CCAs.

##### MCE Generation Rates

Uploading rates into MIDAS requires MCE to teach MIDAS how each rate schedule is billed and the prices associated with it. MCE currently serves approximately 90 rate schedules

(including voltage variants); each rate schedule governs the various prices for which customers are charged for electric generation, and may include up to 9 individual rate components.

CEC Staff has proposed that rates should ideally be provided in hourly format. This alone would increase the individual prices maintained by MCE from approximately 600 today, to at least 788,400 annually (90 schedules x 24 hours x 365 days).

#### Inclusion of PG&E Rate Components

The CEC's interpretation that CCAs must calculate and include PG&E's distribution and transmission rates, as discussed above, is technically infeasible. As PG&E is MCE's statutory billing agent, MCE does not receive PG&E's rates in any way.

PG&E's rates are often not posted on their website until the day before they go into effect, and may change up to six times annually. Rates are posted in their regulatory Advice Letters in PDF format and may have errors or omissions. This makes it technically infeasible for MCE to create combined rates in advance of rates going into effect.

There is no regulatory requirement for when, where, and how PG&E would deliver rate information to MCE. MCE would at present need to manually retrieve these components from PG&E advice letters and tariffs, and MCE could not independently confirm whether the information was accurate. While an automated system for retrieval, identification, and combination of these rates could be developed, such a system would be unreliable without standards; adding a new rate schedule or making formatting changes could easily break the system.

MCE notes that during discussions with the CEC, IOUs have agreed with CCAs that it is unreasonable for any party to calculate and provide consolidated rates. PG&E has suggested that it would separately upload its rates to MIDAS and leave it to the system or tool providers to consolidate; MCE considers this a reasonable approach.

#### Additional Scenarios Considered

Additionally, which rate variants must be included has not yet been defined. A few examples include:

- 3 Service Levels (Light Green, Deep Green, Local Sol);
- California Alternate Rates for Energy (CARE)RE/Family Electric Rate Assistance (FERA) Discounted Rates;
- Emergency Load Reduction Program (ELRP); and
- 15 Power Charge Indifference Adjustment (PCIA) Vintages.

MCE does not recommend that these variations be required, but they remain unresolved. If each of the above scenarios were adopted, the number of hourly rates to be maintained at least annually, would increase to nearly 142 million prices maintained annually.

MCE is concerned that MIDAS is not a relational database and lacks the complexity required to efficiently store and retrieve significant volumes of data. It is not clear that MIDAS was designed to anticipate the large volumes of data due to hourly data and rate variants, nor is it clear that MIDAS can handle the significant volume of rate uploads that would occur at the beginning of each year (i.e. when most LSEs are changing rates at the same time). Thus, depending on the complexity of the final requirements, it may be technically infeasible and cause serious performance issues for end users.

3. *A lack of cost recovery for CCAs provided in the LMS regulations.*

While the Investor-Owned Utilities (IOUs), are allowed to recover the cost of implementing the LMS through rates approved by the California Public Utilities, there is no comparable cost-recovery mechanism for MCE. This approach places CCAs at a competitive disadvantage relative to IOUs and raises particularized cost-effectiveness issues for CCAs. Any costs borne by MCE to implement the standard must currently come solely from MCE customers, highlighting the need to ensure that MCE implements the standards only to the extent that they are cost-effective.

MCE notes that customers are currently facing an affordability crisis. MCE's Board is the sole entity with ratemaking authority for MCE, and while MCE generally supports increasing load flexibility throughout the state, MCE has a solemn responsibility to its customers to use ratepayer funds prudently and on efforts that are beneficial to its customers.

At present, delaying the requirement to upload MCE's time-of-use (TOU) rates to MIDAS is necessary because compliance is currently not technologically feasible or cost effective. The potential risk of incurring unnecessary costs is high, as described further below. It is also noteworthy that a delay will not be disruptive to customers as MCE is unaware of customer devices that have been set up to receive rate information from MIDAS.

MCE finds that the current requirement to upload all time-dependent rates by the July 1, 2023 deadline will lead to a rushed implementation that will drive unnecessary spending that could be avoided by providing sufficient time once all requirements have been articulated. The unnecessary spending will result from building systems and processes that will need to be rebuilt as requirements continue to be defined. Due to outstanding technical issues, differences in interpretations, and lack of clear guidance on what is required for rate uploads into MIDAS, MCE respectfully provides a plan for phased compliance in Section V below.

MCE appreciates the CEC's mission to increase load flexibility and enable load management. However, MCE finds that it would be neither cost-effective nor technologically feasible to fully comply with the current regulations by July 1, 2023.

The phased approach will help (1) improve the cost-effectiveness of MCE staff time and associated use of ratepayer dollars; (2) ensure any systems and processes developed for compliance do not need to be rebuilt or redeveloped in the near term; and (3) ensure that the

rates uploaded to MIDAS will follow a consistent format that maximizes customer usability and statewide benefit.

## **V. PHASED PLAN FOR UPLOADING MCE RATE INFORMATION TO MIDAS**

MCE appreciates the CEC's mission to increase load flexibility and enable load management. However, MCE finds that it would be neither cost-effective nor technologically feasible to fully comply with the current regulations by July 1, 2023. MCE provides the following modified plan for uploading rates to MIDAS and compliance with Section 1623.1(c) of the LMS.

- a. By July 1, 2023, MCE will upload at least one TOU rate to MIDAS.
  - i. MCE will at minimum upload its residential TOU rate, based on its Light Green service option covering:
    1. 84 percent of residential MCE customer accounts on a TOU rate; and
    2. 73 percent of all MCE customer accounts on a TOU rate.
  - ii. MCE will only include its generation rate components as approved by the Board.
- b. No later than twelve months after all MIDAS rate upload requirements are finalized and published by the CEC, MCE will upload all of its electric energy generation rates and required rate modifiers to the MIDAS database.
  - i. MCE will not be required to upload and/or maintain current versions of all of its existing rates if MCE determines that doing so is not cost-effective or is technologically infeasible.
  - ii. MCE will only upload its rates, as approved by its Board. Pacific Gas & Electric PG&E will remain responsible for uploading its rates to MIDAS.

## **VI. DEVELOP A FINAL COMPLIANCE PLAN BY APRIL 2024**

This Interim Plan only pertains to MCE's compliance with Section 1623.1(c) of the Load Management Standards. MCE will still prepare a Final Compliance Plan for submission to the Board by no later than April 2024, showing how it will meet the broader LMS program requirements. This plan will;

- a. Be consistent with Section 1623.1 of the regulations;
- b. Meet the goals of encouraging off-peak usage, encouraging control of seasonal and peak loads to improve system reliability and efficiency, lessening/delaying need for new generation, reduce fossil-fuel and GHG emissions; and
- c. Evaluate cost-effectiveness, equity, technical feasibility, benefits to the grid, and benefits to the customer.

- d. MCE notes that any hourly or sub-hourly rates or other demand response programs developed as part of the LMS compliance process must be approved by MCE's Board in the same manner and process as all other MCE rates.

<b>DOCKETED</b>	
<b>Docket Number:</b>	21-OIR-03
<b>Project Title:</b>	2022 Load Management Rulemaking
<b>TN #:</b>	248526
<b>Document Title:</b>	OAL Approval of Revisions to the Load Management Standards
<b>Description:</b>	Office of Administrative Law Approval of Revisions to the Load Management Standards
<b>Filer:</b>	Stefanie Wayland
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Commission Staff
<b>Submission Date:</b>	1/25/2023 12:31:21 PM
<b>Docketed Date:</b>	1/25/2023



## State of California Office of Administrative Law

In re:  
California Energy Commission

Regulatory Action:

Title 20, California Code of Regulations

Adopt sections: 1623.1

Amend sections: 1621, 1623

Repeal sections:

### NOTICE OF APPROVAL OF REGULATORY ACTION

Government Code Section 11349.3

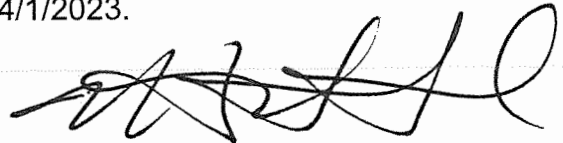
OAL Matter Number: 2022-1206-03

OAL Matter Type: Regular (S)

In this rulemaking action, the Commission amends its electric load management standards to encourage the use of electrical energy during off-peak hours. The amended regulations define various terms. The amendments also update the procedures for the submittal of plans for approval, requests for exemptions from the requirements or delays of compliance with the requirements, and requests for modifications of approved plans. Further, the amendments address the calculations of total marginal costs and the publication of machine-readable electricity rates.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/1/2023.

Date: January 20, 2023



Thanh Huynh  
Senior Attorney

For: Kenneth J. Pogue  
Director

Original: Drew Bohan, Executive Director  
Copy: Corrine Fishman

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

## NOTICE PUBLICATION/REGULATION SUBMISSION

**REGULAR**instructions on  
reverse)

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2021-1214-02	REGULATORY ACTION NUMBER 2022-1206-03	EMERGENCY NUMBER 5
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For use by Office of Administrative Law (OAL) only

OFFICE OF ADMINISTRATIVE LAW

**Electronic Submission**

RECEIVED DATE

12/14/2021

PUBLICATION DATE

12/24/2021

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY  
California Energy CommissionAGENCY FILE NUMBER (If any)  
21-OIR-03**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

JAN 20 2023

1:44 PM

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE Load Management Standards (LMS)		TITLE(S) 20	FIRST SECTION AFFECTED 1621	2. REQUESTED PUBLICATION DATE December 24, 2021
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON corrine fishman		TELEPHONE NUMBER 916-805-7452
OAL USE ONLY		ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/ Withdrawn		FAX NUMBER (Optional)
		NOTICE REGISTER NUMBER 2021, 52-Z		PUBLICATION DATE 12/24/2021

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Load Management Standards (LMS)		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT Section 1623.1	
TITLE(S) 20		AMEND Sections 1621 and 1623	
		REPEAL	
3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)		<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)		<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> File & Print	
<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)		<input type="checkbox"/> Print Only	
<input type="checkbox"/> Other (Specify)			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) April 5, 2022 through April 20, 2022 and, July 6 2022 through July 21, 2022 and, September 12 through September 27, 2022.			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100 )			
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))		<input type="checkbox"/> Effective on filing with Secretary of State	
<input type="checkbox"/> \$100 Changes Without Regulatory Effect		<input type="checkbox"/> Effective other (Specify)	
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)		<input type="checkbox"/> Fair Political Practices Commission	
<input type="checkbox"/> Other (Specify)		<input type="checkbox"/> State Fire Marshal	
7. CONTACT PERSON Corrine Fishman		TELEPHONE NUMBER 916-805-7452	FAX NUMBER (Optional) E-MAIL ADDRESS (Optional) corrine.fishman@energy.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

10/12/22

TYPED NAME AND TITLE OF SIGNATORY

Drew Bohan, Executive Director

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

JAN 20 2023

Office of Administrative Law

Title 20. Public Utilities and Energy  
Division 2. State Energy Resources Conservation and Development Commission  
Chapter 4. Energy Conservation  
Article 5. Load Management Standards  
Sections 1621 -1625

**§ 1621. General Provisions.**

- (a) Purpose. This article establishes electric load management standards pursuant to Section 25403.5 of the Public Resources Code. These standards establish cost-effective programs and rate structures which will encourage the use of electrical energy at off-peak hours and encourage the control of daily and seasonal peak loads to result in improved utility electric system equity, efficiency, and reliability, will lessen or delay the need for new electrical capacity, and reduce fossil fuel consumption and greenhouse gas emissions, and will thereby lowering the long-term economic and environmental costs of meeting the State's electricity needs. These load management standards do not set rates. The standards instead require that entities subject to this article offer rates or programs structured according to the requirements established herein.
- (b) Application. Except as set forth below, 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. In addition, the standards set forth in subsections 1621 and 1623 of this article apply to any Large Community Choice Aggregators (CCA) operating within the service areas and receiving distribution services from the foregoing electric utilities. Large CCAs are not subject to subsections 1622, 1624, and 1625 of this article. Section 1621 subsections (d)-(g) and Section 1623 subsections (a), (b) and (d) do not apply to either the Los Angeles Department of Water and Power, the Sacramento Municipal Utility District or to the Large CCAs. The standards set forth in Section 1623.1 apply to the Los Angeles Department of Water and Power, the Sacramento Municipal Utility District and to the Large CCAs. 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, and Large CCAs operating within the service areas of such electric utilities.
- (c) Definitions. In this article, the following definitions apply:
- (9)(1) "Building type" means the classification of a non-residential building in accordance with the following table: California Code of Regulations, Title 24, Part 2, Chapter 3 of the California Building Code.

Building Type	Description
1	Office
1.1	Small (0-30,000 sq. ft.)
1.2	Med (30,000-200,000 sq. ft.)
1.3	Large (200,000 + sq. ft.)
1.3.1	Low-rise (two or less stories)
1.3.2	Highrise (three or more stories)
2	Retail
2.1	Retail - General
2.1.1	Small (1-9,000 sq. ft.), detached
2.1.2	Small (1-9,000 sq. ft.), attached
2.1.3	Med (9,000-20,000 sq. ft.), detached
2.1.4	Med (9,000-20,000 sq. ft.), attached
2.1.5	Med (9,000-20,000 sq. ft.), enclosed mall
2.1.6	Large (20,000 + sq. ft.), detached
2.1.7	Large (20,000 + sq. ft.), attached
2.1.8	Large (20,000 + sq. ft.), enclosed mall
2.1.9	Highrise department store (three or more stories)
2.2	Retail - Food
2.2.1	Small (1-5,000 sq. ft.)
2.2.2	Large (5,000 + sq. ft.)
3	Restaurants
3.1	Fast Food
3.2	Sit-down
4	Storage Buildings
4.1	Conditioned
4.2	Unconditioned
5	Hotels and Motels
5.1	Large (50,000 + sq. ft.)
5.2	Small (less than 50,000 sq. ft.)
6	Schools
6.1	Elementary/pre-schools
6.2	Jr. high/high schools
6.3	Jr. colleges/trade schools
6.4	Colleges/universities
7	Public assembly buildings
7.1	Auditoriums

7.2	Theaters
7.3	Sports arenas
8	Health care facilities
8.1	General hospitals
8.2	Research hospitals
8.3	Mental hospitals
8.4	Convalescent hospitals/homes
9	Computer facilities
10	Auto repair and service stations
11	Miscellaneous

(2) "Community choice aggregators" or "CCAs" means entities as defined in Public Utilities Code section 331.1.

(6)(3) "Central air conditioner" means any residential electric air conditioner which delivers cooled air through ducts to rooms.

(8)(4) "Commercial customers" means those customers of a utility or CCA who run any business described in Standard Industrial Classification Groups 40 through 86, and 89 through 99, and which do not treat sewage or manufacture goods or provide other process-oriented services.

(i)(A) "Large commercial customers" are those businesses whose demand for electricity equals or exceeds 500 kilowatts.

(ii)(B) "Small commercial customers" are those businesses whose demand for electricity is less than 500 kilowatts.

(10)(5) "Conditioned Space" means an enclosed space within a building that is directly conditioned or indirectly conditioned, consistent with California Code of Regulations, Title 24, Part 6, section 100.1(b), the space, within a building which is provided with a positive heat supply or positive method of cooling.

(6) "Customer class" means a broad group of customers used for rate design. Customer classes include but are not limited to residential, commercial, industrial, and agricultural, but does not include street lighting. "Customer" or "customers" mean a customer or customers of a utility or Large CCA within a customer class.

(7) "Greenhouse gas" or "GHG" has the same meaning as in California Code of Regulations, Title 17, section 95802.

(8) "Large Investor-Owned Utilities" and "Large IOUs" mean the San Diego Gas and Electric Company, the Southern California Edison Company, and the Pacific Gas and Electric Company.

(9) "Large Publicly-Owned Utilities" and "Large POUs" mean the Los Angeles Department of Water and Power and the Sacramento Municipal Utility District.

- (10) "Large Community Choice Aggregators" and "Large CCAs" mean the Clean Power Alliance of Southern California, East Bay Community Energy, Marin Clean Energy, Central Coast Community Energy, Silicon Valley Clean Energy Authority, San Jose Clean Energy, Peninsula Clean Energy Authority, Clean Power SF, Sonoma Clean Power Authority, San Diego Community Power, Pioneer Community Energy, Valley Clean Energy, and any community choice aggregator that provides in excess of 700 GWh of electricity to customers in any calendar year. For community choice aggregators that become subject to these regulations after their effective date, the effective date of their compliance obligations shall be April 1 of the year after they exceed the 700 GWh threshold.
- (11) "Load management tariff" means a tariff with time-dependent values that vary according to the time of day to encourage off-peak electricity use and reductions in peak electricity use.
- ~~(7)~~(12) "Marginal cost" or "locational marginal cost" is means the change in current and committed future electric system utility cost that is caused by a customer initiated change in electricity usage supply and demand during a specified time interval at a specified location. Total marginal cost may be divided into the commonly known categories of marginal energy, marginal capacity, and marginal customer costs, or any other appropriate categories.
- (13) "Rate Identification Number" or "RIN" means the unique identifier established by the Commission for an electricity rate.
- ~~(3)~~(14) "Rate-approving body" means the California Public Utilities Commission in the case of investor-owned utilities, such as the San Diego Gas and Electric Company, the Southern California Edison Company, and the Pacific Gas and Electric Company. It means or the governing body of CCAs or publicly owned utilities such as the Los Angeles Department of Water and Power, and the Sacramento Municipal Utility District. For purposes of this article, the Board of Water and Power Commissioners of the City of Los Angeles is the rate-approving body for the Los Angeles Department of Water and Power.
- ~~(4)~~(15) "Residential" means any family dwelling within the utility's or CCA's service area which uses electricity for noncommercial purposes as defined in the utility's or CCA's terms and conditions of service.
- ~~(2)~~(16) "Service area" is the means any contiguous geographic area serviced by the same electric utility or CCA in which the utility supplies electricity to retail customers.
- (17) "Tariff" means a pricing schedule or rate plan that a utility or CCA offers to their customers specifying the components of the customer's electricity bill.
- (18) "Time-dependent rate" means a rate that can vary depending on the time of day to encourage off-peak electricity use and reductions in peak electricity use. Time-of-use, hourly, and sub-hourly rates are time-dependent rates.

(19) "Time-of-use rate" means a rate with predefined prices that vary according to the time of day, the season, and/or the day type (weekday, weekend, or holiday).

(4)(20) "Utility" means those electric utilities to which the sections of this article apply, as specified in subsection (b).

(5)(21) "Water heater" means any residential electric water heater except those which provide hot water to heat space or those which operate within electric dishwashers.

~~(d) Review and Approval of Utility Submittals. These load management standards require utilities to submit various plans to the Executive Director. All such submittals shall be reviewed by the Executive Director, and shall be subject to approval by the full Commission. The Executive Director shall complete his review of such submittals and shall report to the Commission within thirty calendar days after receipt as to whether the submittal is consistent with the provisions of this article. Within thirty calendar days after the Executive Director renders his report, the Commission shall, following a public hearing, approve or disapprove the submittal. The Commission may also approve a submittal on condition that the utility make specified changes or additions to the submittal, within a reasonable period of time set by the Commission. A conditional approval shall not take effect until the utility makes the specified changes or additions to the submittal under review. The Commission shall approve submittals which are consistent with these regulations and which show a good faith effort to plan to meet program goals for the standards.~~

~~If the Commission disapproves a submittal, the utility shall be notified of the specific reasons for such disapproval, and the utility shall submit a revised submittal for review by the Executive Director in accordance with the provisions of this subsection.~~

~~(e) Information Requests. In order to facilitate his review of a utility's compliance with the provisions of this article, the Executive Director may request a utility to furnish copies of any information in the utility's possession which is relevant to its implementation of these standards, including any tariff proposals and associated information which it submits to its rate approving body. The Executive Director may set a reasonable period of time within which the utility must supply the requested information.~~

~~If any document which is requested by the Executive Director contains proprietary information or trade secrets, the utility shall only be required to furnish the document to the Executive Director, if the Commission has established procedures, after a public hearing, for the protection of such proprietary information or trade secrets.~~

~~(f) Revisions of Approved Plans. Each time a utility significantly revises any plan or part of a plan required by this article, that was previously approved by the Commission, it shall submit this revised plan for review and approval pursuant to~~

~~subsection (d) above. Such revised plan shall not be valid until it is approved by the Commission. If the Executive Director believes that new technologies, the state of the economy or other new information warrant revisions to plans which have already been approved, he shall request the utilities to make the appropriate revisions as part of their next annual report or within 90 days, whichever comes later. If the Executive Director issues such a request, the utility shall submit a revised plan for review and approval pursuant to subsection (d) above.~~

~~(g) Modifications to Program Goals. If, during the planning or execution of any program required by this article, a utility, despite its best good faith efforts, believes that it cannot achieve one or more of the program goals set forth in the various sections of this article or that a program is not cost-effective, the utility may submit a report to the Commission explaining the reasons therefore, and indicating when the utility believes that it could achieve the program goal or goals, or suggesting alternative goals. If based upon the utility report, or its own studies, the Commission finds that there are good and sufficient reasons for the utility not being able to achieve the goal or goals, the Commission shall modify any previously approved goal for that utility to one that is feasible and cost-effective for the utility to achieve.~~

~~(h) Utility Request for Exemptions.~~

~~(1) A utility may, at any time after the effective date of this article, apply to the Commission for an exemption from the obligation to comply with any or all of these standards. Any such application shall set forth in detail the reasons why a denial of the application by the Commission would result in extreme hardship to the utility, or in reduced system reliability and efficiency, or why the standard or standards from which the exemption is sought would not be technologically feasible or cost-effective for the utility to implement. The application shall also set forth the period of time during which the exemption would apply, and shall indicate when the utility reasonably believes the exemption will no longer be needed.~~

~~(2) Within 30 days after receipt of any such application, the Commission shall hold a hearing to consider whether there is sufficient information contained in the application to justify further hearings on the merits. If the Commission finds that the application does not contain sufficient information, it shall dismiss the application, and notify the utility of the specific reasons for the dismissal. The utility may thereafter submit a revised application in good faith.~~

~~(3) If the Commission finds that the application does contain sufficient information, it shall schedule such further hearings as may be necessary to fully evaluate the application.~~

~~(4) If, after holding hearings, the Commission decides to grant an exemption to a utility, the Commission shall issue an order granting exemption. The order~~



shall set forth findings and specific reasons why the exemption is being granted.

(i) ~~Noncompliance. The Executive Director may, after a review of the matter with the utility, file a complaint with the Commission, alleging that the utility is not in compliance with the provisions of this article:~~

~~(1) If the utility is not conducting a program in conformance with the provisions of its approved plan;~~

~~(2) If the utility fails to provide a required submittal in a timely manner; or~~

~~(3) If the utility fails to make requested changes or additions to any such submittal within a reasonable time.~~

(d) Large IOU Plans to Comply with Load Management Standards

(1) Each Large IOU shall submit a plan to comply with Sections 1621 and 1623 of this article to the Executive Director no later than six (6) months after April 1, 2023.

(2) The Executive Director shall review the plans and either return them to the Large IOU for revision or submit them to the Commission for review and potential approval. The Executive Director may recommend, and the Commission may approve, a submittal on condition that the Large IOU make specified changes or additions to the submittal, within a reasonable period of time set by the Commission. A conditionally-approved plan shall not become effective until the Large IOU makes the specified changes or additions to the submittal under review. The Commission shall approve submittals which are consistent with these regulations and which show a good faith effort to plan to meet program goals for the standards. In reviewing a plan, the Executive Director and the Commission may request additional information consistent with Sections 1621 and 1623.

(3) All proposed plan revisions must be submitted to the Executive Director for review. The Executive Director may approve plan revisions that do not affect compliance with the requirements of Sections 1621 or 1623. The Executive Director shall submit all other plan revisions to the Commission for approval.

(4) Large IOUs shall submit to the Executive Director annual reports demonstrating their implementation of plans approved pursuant to this section. The reports shall be submitted one year after plans are approved pursuant to subsection (2) and annually thereafter.

(e) Exemptions, Delays, or Modifications

(1) Large IOUs may apply to the Executive Director for an exemption from the requirements of Sections 1621 and 1623 of this article, to delay compliance with its requirements, or to modify a load management standard compliance plan. The Commission may, by resolution, order a Large IOU to modify its approved load management standard plan. Upon such order by the

Commission, a Large IOU shall submit an application to modify its plan within 90 days of the Commission's order.

- (2) Applications for exemptions or delays shall set forth the requested period during which the exemption or delay would apply and indicate when the Large IOU reasonably believes the exemption or delay will no longer be needed. The application further shall demonstrate one or more of the following:

  - (A) that despite a Large IOU's good faith efforts to comply, requiring timely compliance with the requirements of this article would result in extreme hardship to the Large IOU,
  - (B) requiring timely compliance with the requirements of this article would result in reduced system reliability (e.g., equity or safety) or efficiency, or
  - (C) requiring timely compliance with the requirements of this article would not be technologically feasible or cost-effective for the Large IOU to implement. Applications for exemptions or delays may be supported by proposing pilot programs that demonstrate how and when a Large IOU will come into compliance with the requirements of this article.
- (3) Applications for modifications shall demonstrate that despite the Large IOU's good faith efforts to implement its load management standard plan, the plan must be modified to provide a more technologically feasible, equitable, safe or cost-effective way to achieve the requirements of this article or the plan's goals.
- (4) The Executive Director shall review applications for exemptions, delays, and modifications and make an initial determination of whether an application demonstrates the requirements of either subsection (2) or (3) above.- The Executive Director shall then submit the application to the Commission with a recommendation of whether to approve or reject the application based on their initial determination. In reviewing these applications, the Executive Director and the Commission may request additional information or revisions of the application from a Large IOU consistent with Sections 1621 and 1623. If a Large IOU fails to provide information or revisions by a deadline established by the Executive Director or the Commission, the Commission may deny the application on that basis. The Commission may place conditions on its approval of plans or material plan revisions that are necessary to guarantee that the plan or plan revision will comply with Section 1621 and 1623 by a date certain.
- (f) Enforcement. The Executive Director may, after reviewing the matter with the Large IOU, file a complaint with the Commission following the process set forth in Sections 1233.1 to 1233.4 or seek injunctive relief if a Large IOU:

  - (1) Fails to adhere to its approved or conditionally approved load management standard plan,
  - (2) Modifies its approved load management standard plan without approval,

(3) Does not provide information by a deadline established by the Executive Director or the Commission, or

(4) Violates the provisions of this article.

(j)(g) Recovery of Program Costs

In its rate applications, each utilityLarge IOU shall seek to recover the full costs associated with conducting each program required by this article from the class of customers which the program most directly affects. The utilityLarge IOU shall not be required to commence implementation of any program required by this article until the utility'sLarge IOU's rate-approving body has approved the tariffs which are a part of any such program and a method for recovering the costs of the program. This does not affect any obligations Large IOUs have under Section 1623(b).

~~(k) Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement to local government entities (i.e., the Los Angeles Department of Water and Power and the Sacramento Municipal Utility District) for the costs of carrying out the programs mandated by these standards, because the Commission has found these standards to be cost-effective. The savings which these entities will realize as a result of carrying out these programs will outweigh the costs associated with implementing these programs.~~

Note: Authority cited: Sections 25213, and 25218(e), and 25403.5, Public Resources Code. Reference: Sections 25132 and 25403.5, Public Resources Code.

**§ 1622. Residential Load Management Standard. – No Changes**

**§ 1623. Load Management Tariff Standard.**

(a) Marginal Cost-Based Rates. This standard requires that ~~a utility~~each Large IOU develop marginal cost-based rates, using a recommended methodology ~~or the methodology approved by its rate-approving body, when it prepares rate applications for retail services, structured according to the requirements of this article~~ and that the utilityLarge IOU submit such rates to its rate-approving body for approval.

(1) 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, including the locational marginal cost of associated greenhouse gas emissions, 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 capacity cost computations shall reflect the variations in the probability and value of system reliability of each component (generation, transmission, and distribution).

- (2) Within twenty-one (21) months of April 1, 2023, each Large IOU shall apply to its rate-approving body for approval of at least one marginal cost-based rate, in accordance with 1623(a)(1), for each customer class.
- (3) Large IOUs shall provide the Commission with informational copies of tariff applications when they are submitted to their rate-approving bodies.
- (b) Publication of Machine-Readable Electricity Rates. No later than three (3) months after April 1, 2023, each Large IOU shall upload its existing time-dependent rates applicable to its customers to the Commission's Market Informed Demand Automation Server (MIDAS) database. Each Large IOU shall upload all time-dependent rates, including those approved after April 1, 2023, to MIDAS prior to the effective date of the time-dependent rates each time a time-dependent rate is approved by the rate-approving body and each time a time-dependent rate changes.

The time-dependent rates uploaded to the MIDAS database shall include all applicable time-dependent cost components, including, but not limited to, generation, distribution, and transmission. The Commission maintains public access to the MIDAS-database through an Application Programming Interface (API) that, provided a Rate Identification Number (RIN), returns information sufficient to enable automated response to marginal grid signals including price, emergency events, and greenhouse gas emissions.

~~Marginal Cost Methodologies and Rates. Within six months after the Marginal Cost Pricing Project Task Force (which is jointly sponsored by the CEC and CPUC under an agreement with the Federal Department of Energy) makes its final report available to the public, and the Commission approves it by resolution, a utility submitting a general rate filing to its rate-approving body shall include marginal cost based rates in such filing which have been developed by using at least one methodology recommended by the Task Force, except that if a utility's rate-approving body has approved a marginal cost methodology, a utility may substitute the approved methodology for one recommended by the Task Force.~~

~~If at any time subsequent to the Commission's approval of the Task Force report, the utility's rate-approving body approves a marginal cost methodology which is substantially different from any of the methodologies recommended by the Task Force, the utility shall so inform the Commission, and shall explain the nature of and the reasons for these differences.~~

~~In addition to marginal cost based rates which it develops using a methodology recommended by the Task Force report for that utility or approved by its rate-approving body, the utility may also submit marginal cost based rates which it develops using any alternative methodology that it deems appropriate.~~

~~The utility may also submit other rates or tariffs which it deems appropriate.~~

Nothing in this section shall prevent the Commission from recommending the approval of marginal cost methodologies different from those used by a utility to any rate approving body.

(c) Support Customer Ability to Link Devices to Electricity Rates.

(1) Third-party Access. The Large IOUs, Large POU's and Large CCAs shall develop a single statewide standard tool for authorized rate data access by third parties that is compatible with each of those entities' systems. The tool shall:

(A) Provide the RIN(s) applicable to the customer's premise(s) to third parties authorized and selected by the customer;

(B) Provide any RINs, to which the customer is eligible to be switched, to third parties authorized and selected by the customer;

(C) Provide estimated average or annual bill amount(s) based on the customer's current rate and any other eligible rate(s) if the Large IOU, Large POU or Large CCA has an existing rate calculation tool and the customer is eligible for multiple rates;

(D) Enable the authorized third party to, upon the direction and consent of the customer, modify the customer's applicable rate to be reflected in the next billing cycle according to the Large IOU's, Large POU's or Large CCA's standard procedures;

(E) Incorporate reasonable and applicable cybersecurity measures;

(F) Minimize enrollment barriers; and

(G) Be accessible in a digital, machine-readable format according to best practices and standards.

(2) The Large IOUs, Large POU's and Large CCAs shall submit the single statewide standard tool developed pursuant to Section 1623(c)(1) to the Commission for approval at a Business Meeting.

(A) The tool must be submitted within eighteen (18) months of April 1, 2023.

(B) The Executive Director may extend this deadline upon a showing of good cause.

(C) The Large IOUs, Large POU's and Large CCAs shall describe a single set of terms and conditions they intend to require of third parties using the single statewide standard tool.

(3) Upon Commission approval the Large IOUs, Large POU's and Large CCAs shall implement and maintain the tool developed in Section 1623(c)(1).

(4) Customer Access. No later than one (1) year after April 1, 2023, each Large IOU, Large POU and Large CCA shall provide customers access to their RIN(s) on customer billing statements and online accounts using both text and quick response (QR) or similar machine-readable digital code.

(5) Any changes to the single statewide standard tool, including changes to the terms and conditions, shall be submitted to the Executive Director for approval. The Executive Director shall submit any substantive changes to the Commission for approval at a Business Meeting.

(d) (e)-Public Information Programs. Large IOUs shall encourage mass-market automation of load management through information and programs. As soon as a utility's rate-approving body has adopted a tariff in accordance with a recommended or approved marginal cost methodology, the utility shall conduct a public information program which shall inform the affected customers why marginal cost based tariffs are needed, exactly how they will be used and how these tariffs can save the customer money.

(1) No later than eighteen (18) months after April 1, 2023, each Large IOU shall submit to the Executive Director a list of load flexibility programs deemed cost-effective by the Large IOU. The portfolio of identified programs shall provide any customer with at least one option for automating response to MIDAS signals indicating marginal cost-based rates, marginal prices, hourly or sub-hourly marginal greenhouse gas emissions, or other Commission-approved marginal signal(s) that enable automated end-use response.

(2) Within forty-five (45) months of April 1, 2023, each Large IOU shall offer to each of its electricity customers voluntary participation in a marginal cost-based rate developed according to Section 1623(a) if such rate is approved by the Large IOU's rate-approving body, or a cost-effective program identified according to Section 1623(d)(1) if such rate is not yet approved by the Large IOU's rate-approving body.

(3) Each Large IOU shall conduct a public information program to inform and educate the affected customers why marginal cost-based rates and automation are needed, how they will be used, and how these rates can save the customer money.

(d) Compliance. A utility shall be in compliance with this standard if all of the utility's rate applications are prepared in accordance with the provisions of subsection (b) above, and the utility provides informational copies of its applications to the Commission.

Note: Authority cited: Sections 25213, and 25218(e), and 25403.5, Public Resources Code. Reference: Sections 25132 and 25403.5, Public Resources Code.

### **§ 1623.1. Large POU and Large CCA Requirements for Load Management Standards.**

(a) Large POU Plans to Comply with Load Management Standards

(1) Within six months of April 1, 2023, each Large POU, and within one year of April 1, 2023, each Large CCA, shall submit a compliance plan that is consistent with this Section 1623.1 to its rate approving body for adoption in a duly noticed public meeting to be held within 60 days after the plan is

submitted. The plan shall describe how the Large POU or the Large CCA will meet the goals of encouraging the use of electrical energy at off-peak hours, encouraging the control of daily and seasonal peak loads to improve electric system efficiency and reliability, lessening or delaying the need for new electrical capacity, and reducing fossil fuel consumption and greenhouse gas emissions. The plan shall include consideration of programs and rate structures as specified in section 1623.1 (b)-(d).

(A) The plan must evaluate cost effectiveness, equity, technological feasibility, benefits to the grid, and benefits to customers of marginal cost-based rates for each customer class.

(B) If after consideration of the factors in Subsection 1623.1(a)(1)(A) the plan does not propose development of marginal cost-based rates, the plan shall propose programs that enable automated response to marginal cost signal(s) for each customer class and evaluate them based on their cost-effectiveness, equity, technological feasibility, benefits to the grid, and benefits to customers.

(C) The Large POU or the Large CCA shall review the plan at least once every three years after the plan is adopted. The Large POU or Large CCA shall submit a plan update to its rate approving body where there is a material change to the factors considered pursuant to Subsections 1623.1 (a)(1)(A) and (B).

(2) The rate approving body of a Large POU or a Large CCA may approve a plan, or material revisions to a previously approved plan, that delays compliance or modifies compliance with the requirements of Subsections 1623.1 (b)-(c), if the rate approving body determines that the plan demonstrates any of the following:

(A) that despite a Large POU's or Large CCA's good faith efforts to comply, requiring timely compliance with the requirements of this article would result in extreme hardship to the Large POU or the Large CCA,

(B) requiring timely compliance with the requirements of this article would result in reduced system reliability (e.g., equity or safety) or efficiency,

(C) requiring timely compliance with the requirements of this article would not be technologically feasible or cost-effective for the Large POU to implement, or

(D) that despite the Large POU's or the Large CCA's good faith efforts to implement its load management standard plan, the plan must be modified to provide a more technologically feasible, equitable, safe or cost-effective way to achieve the requirements of this article or the plan's goals.

(3) Commission Approval of Large POU and Large CCA Plans to Comply with Load Management Standards and Material Plan Revisions



- (A) Within thirty (30) days after adoption of a plan or material plan revision pursuant to this subdivision, each large POU and Large CCA shall submit its plan to comply with the requirements of this Section 1623.1 or material plan revision to the Executive Director.
- (B) The Executive Director shall review plans or material plan revisions and either return them to the Large POU or the Large CCA for changes or submit them to the Commission for review and potential approval. The Executive Director shall make an initial determination whether the plan or material plan revision is consistent with the requirements of Section 1623.1(a)(1) and (2). In reviewing plans and material plan revisions, the Executive Director may request additional information or recommend changes to make it consistent with the requirements of Section 1623.1(a)(1) and (2). The Large POU or Large CCA shall respond to requests or recommendations within ninety (90) days of receipt from the Executive Director. The Executive Director shall then submit the plan or material plan revision to the Commission with a recommendation on whether to approve it. The Commission may also request additional information and shall approve plans and material plan revisions which are consistent with Section 1623.1(a)(1) and (2), and which show a good faith effort to meet the goals listed in Section 1623.1(a)(1) and (2). The Commission may place conditions on its approval of plans or material plan revisions that are necessary to guarantee that the plan or material plan revision will comply with Section 1623.1 (a)(1) and (2) by a date certain.
- (C) Each Large POU and Large CCA shall submit to the Executive Director annual reports demonstrating their implementation of plans approved pursuant to this subsection, as such plans may be revised pursuant to this subsection. The reports shall be submitted one year after plans are approved pursuant to subsection (2) and annually thereafter.
- (b) Large POU and Large CCA Marginal Cost-Based Rates and Programs. Each Large POU and each Large CCA shall develop marginal cost-based rates or public programs structured according to the requirements of this article.
- (1) 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, including the locational marginal cost of associated greenhouse gas emissions, 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 Los Angeles Department of Water and Power, the Balancing Authority of Northern California, or other balancing authority. Marginal capacity cost computations shall reflect the variations in the probability and value of system reliability of each component (generation, transmission, and distribution).



- (2) Within two (2) years of April 1, 2023, each Large POU, and within twenty-seven (27) months of April 1, 2023, each Large CCA, shall apply to its rate-approving body for approval of at least one marginal cost-based rate, that meets the requirements of Subsection 1623.1(b)(1). Large CCAs may apply for approval of marginal cost-based rates that are offered by the Large IOUs in whose service areas the Large CCAs exist in.
  - (A) Large POU's and Large CCAs shall apply for approval of marginal cost-based rates only for those customer classes for which the rate-approving body determines such a rate will materially reduce peak load.
  - (B) Large POU's and Large CCAs shall provide the Commission with informational copies of tariff applications when they are submitted to their rate-approving bodies.
- (3) No later than eighteen (18) months after April 1, 2023, each Large POU and each Large CCA shall submit to the Executive Director a list of load flexibility programs deemed cost-effective by the Large POU or the Large CCA.
  - (A) The portfolio of identified programs shall provide at least one option for automating response to MIDAS signals for each customer class that the rate-approving body determines such a program will materially reduce peak load.
  - (B) The programs shall allow customers to respond to MIDAS signals indicating marginal cost-based rates, marginal prices, hourly or sub-hourly marginal greenhouse gas emissions, or other Commission-approved marginal signal(s).
- (4) Within three (3) years of April 1, 2023, each Large POU, and within fifty-one (51) months of April 1, 2023, each Large CCA, shall offer to each of its electricity customers voluntary participation in either a marginal cost-based rate developed according to Subsection 1623.1(b)(2), if such rate is approved by the Large POU's or Large CCA's rate-approving body, or a cost-effective program identified according to Subsection 1623.1(b)(3).
- (5) Each Large POU and Large CCA shall conduct a public information program to inform and educate the affected customers why marginal cost-based rates or load flexibility programs, and automation are needed, how they will be used, and how these rates or programs can save the customer money.
- (c) Publication of Machine-Readable Electricity Rates. No later than three (3) months after April 1, 2023, each Large POU and each Large CCA shall upload its existing time-dependent rates applicable to its customers to the Commission's Market Informed Demand Automation Server (MIDAS) database. Each Large POU and Large CCA shall upload all time-dependent rates, including those approved after April 1, 2023, to MIDAS prior to the effective date of the time-dependent rates each time a time-dependent rate is approved by the rate-approving body and each time a time-dependent rate changes.

The time-dependent rates uploaded to the MIDAS database shall include all applicable time-dependent cost components, including, but not limited to, generation, distribution, and transmission. The Commission maintains public access to the MIDAS database through an Application Programming Interface (API) that, provided a Rate Identification Number (RIN), returns information sufficient to enable automated response to marginal grid signals, such as price, emergency events, and greenhouse gas emissions.

(d) Enforcement. The Executive Director may, after reviewing the matter with the Large POU or the Large CCA, file a complaint with the Commission following the process set forth in Sections 1233.1 to 1233.4 or seek injunctive relief if a Large POU or Large CCA:

- (1) Fails to adhere to its approved load management standard plan,
- (2) Materially modifies its approved load management standard plan without approval,
- (3) Does not provide information by a deadline established by the Executive Director or the Commission, or
- (4) Violates the provisions of this article.

(e) There shall be no reimbursement to local government entities for the costs of carrying out the programs mandated by these standards, because the Commission has found these standards to be cost-effective. The savings which these entities will realize as a result of carrying out these programs will outweigh the costs associated with implementing these programs.

Note: Authority cited: Sections 25213, and 25218(e), and 25403.5, Public Resources Code. Reference: Sections 25132 and 25403.5, Public Resources Code.

**§ 1624. Swimming Pool Filter Pump Load Management Standard. – No Changes.**

**§ 1625. Non-Residential Load Management Standard. – No Changes.**

<b>DOCKETED</b>	
<b>Docket Number:</b>	21-OIR-03
<b>Project Title:</b>	2022 Load Management Rulemaking
<b>TN #:</b>	241465
<b>Document Title:</b>	California Community Choice Association Comments - on Proposed Amendments to the Load Management Standards
<b>Description:</b>	N/A
<b>Filer:</b>	System
<b>Organization:</b>	California Community Choice Association
<b>Submitter Role:</b>	Public
<b>Submission Date:</b>	2/7/2022 5:18:25 PM
<b>Docketed Date:</b>	2/7/2022

*Comment Received From: California Community Choice Association*  
*Submitted On: 2/7/2022*  
*Docket Number: 21-OIR-03*

**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:

2022 Load Management Rulemaking

Docket No. 21-OIR-03

**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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February 7, 2022

**STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION AND  
DEVELOPMENT COMMISSION**

In the Matter of:

2022 Load Management Rulemaking

Docket No. 21-OIR-03

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION’S COMMENTS  
ON THE PROPOSED AMENDMENTS TO THE LOAD MANAGEMENT  
STANDARDS CONTAINED IN THE CALIFORNIA CODE OF  
REGULATIONS, TITLE 20**

The California Community Choice Association<sup>1</sup> (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

<sup>1</sup> 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.<sup>2</sup> 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).<sup>3</sup> 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.

<sup>2</sup> Cal. Pub. Res. Code § 25403.5.

<sup>3</sup> 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.<sup>4</sup> Unlike IOUs, CCA rates are not overseen by the CPUC or, by the Final Staff Report’s own admission, the Commission.<sup>5</sup> 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:

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

<sup>5</sup> 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.*<sup>6</sup>

“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.”<sup>7</sup> 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

<sup>6</sup> Amendments § 1623(a).

<sup>7</sup> *Id.*, at § 1623(c)(7).

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

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

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.<sup>10</sup>

<sup>8</sup> *Id.*, at § 1623(a)(1).

<sup>9</sup> *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).

<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> Subsection 25403.5(a) requires that the Commission “adopt standards by regulation for a program of electrical load management for each *utility service area*.”<sup>13</sup> PRC section 25118 defines a “service area” as “any contiguous geographic area serviced by the same electric utility.”<sup>14</sup> 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.”<sup>15</sup>

<sup>11</sup> *Id.*

<sup>12</sup> 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).

<sup>13</sup> *Id.*, at § 25403.5(a).

<sup>14</sup> *Id.*, at § 25118.

<sup>15</sup> *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.*”<sup>16</sup> The CPUC’s jurisdiction extends to IOUs, and the CPUC has acknowledged its lack of ratemaking authority over CCAs.<sup>17</sup> 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.*”<sup>18</sup> 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

<sup>16</sup> *Id.*

<sup>17</sup> 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”).

<sup>18</sup> 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.*<sup>19</sup>

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.<sup>20</sup> 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.”<sup>21</sup> 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.”<sup>22</sup> 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.<sup>23</sup> Critically, the CPUC has not mandated particular rates for CCA customers.

<sup>19</sup> Final Staff Report at 17 (emphasis supplied).

<sup>20</sup> AB 117, Stats. 2002; ch. 838 (codified at Cal. Pub. Util. Code § 366.2).

<sup>21</sup> Cal. Pub. Util. Code § 366.2(c)(1).

<sup>22</sup> *Id.*, at § 366.2(c)(3)(B)-(C).

<sup>23</sup> *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.”<sup>24</sup> 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.”<sup>25</sup> 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*.”<sup>26</sup>

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.<sup>27</sup> 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.

<sup>24</sup> Final Staff Report at 17 (emphasis supplied).

<sup>25</sup> *Id.* (emphasis supplied).

<sup>26</sup> *Id.* (emphasis supplied).

<sup>27</sup> 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.”<sup>28</sup> 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.

<sup>28</sup> 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,



Evelyn Kahl  
General Counsel and Director of Policy  
CALIFORNIA COMMUNITY CHOICE  
ASSOCIATION

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.

<b>DOCKETED</b>	
<b>Docket Number:</b>	21-OIR-03
<b>Project Title:</b>	2022 Load Management Rulemaking
<b>TN #:</b>	242735
<b>Document Title:</b>	California Community Choice Association Comments - on the Proposed Revisions to the Load Management Standards
<b>Description:</b>	N/A
<b>Filer:</b>	System
<b>Organization:</b>	California Community Choice Association
<b>Submitter Role:</b>	Public
<b>Submission Date:</b>	4/20/2022 5:01:46 PM
<b>Docketed Date:</b>	4/20/2022

*Comment Received From: California Community Choice Association*  
*Submitted On: 4/20/2022*  
*Docket Number: 21-OIR-03*

**on the Proposed Revisions to the Load Management Standards**

*Additional submitted attachment is included below.*

**STATE OF CALIFORNIA ENERGY RESOURCES  
CONSERVATION AND DEVELOPMENT COMMISSION**

In the Matter of:

2022 Load Management Rulemaking

Docket No. 21-OIR-03

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S COMMENTS  
ON THE PROPOSED REVISIONS TO THE LOAD MANAGEMENT STANDARDS**

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April 20, 2022

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**STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION AND  
DEVELOPMENT COMMISSION**

In the Matter of:

2022 Load Management Rulemaking

Docket No. 21-OIR-03

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION’S COMMENTS  
ON THE PROPOSED REVISIONS TO THE LOAD MANAGEMENT STANDARDS**

The California Community Choice Association<sup>1</sup> (CalCCA) submits these Comments pursuant to the *Corrected Notice of 15-Day Public Comment Period*, dated April 5, 2022, on the *Proposed Revisions to the Load Management Standards* (the “15-Day Proposed Amendments”).

**I. INTRODUCTION**

CalCCA supports the California Energy Commission’s (Commission’s) efforts to establish broad load management standards (LMS) that incentivize third-party automation providers to create products to automate demand flexibility. Community choice aggregators (CCAs) are eager to provide load-management tools for their customers and welcome the opportunity to work with the Commission to advance these goals. However, the Commission must only proceed in accordance with its jurisdictional authority, and not overreach to ensure success of its program. The inclusion of CCAs in the proposed LMS oversteps the authority

<sup>1</sup> California Community Choice Association represents the interests of 23 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, Orange County Power Authority, 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.

granted to the Commission in Public Resources Code (PRC) section 25403.5 and is legally unsustainable.

In addition to the legal prohibition, CalCCA has identified several program “flaws” in the proposed regulations that would create barriers to even voluntary CCA participation. One such flaw, the inclusion of CCAs in the definition of “Utility,” was adequately addressed by the Commission in the 15-Day Proposed Amendments. However, several other flaws remain in the proposed language, including that:

- CCAs cannot implement an hourly locational marginal cost-based rate until the investor-owned utilities (IOU) develop the data and billing systems to incorporate such a rate;
- The Commission’s finding that CCA costs to implement the LMS are negligible is unsubstantiated; and
- The Commission has arbitrarily excluded electric service providers (ESPs) and small publicly-owned utilities (POUs) among the entities subject to the LMS and must modify the proposal to apply the standards consistently.

## **II. THE COMMISSION DOES NOT HAVE JURISDICTION TO MANDATE CCA COMPLIANCE WITH ITS LOAD MANAGEMENT STANDARDS**

The 15-Day Proposed Amendments does not address CalCCA’s continuing assertion, in both written comments and in conversations with Commission staff, that the Commission does not have jurisdictional authority to mandate CCA compliance with the LMS.<sup>2</sup> The LMS are established pursuant to PRC section 25403.5, which provides jurisdiction to the Commission to “adopt standards by regulation for a program of electrical load management for each utility service area.”<sup>3</sup> Included within the “techniques” for load management are “[a]djustments in rate

<sup>2</sup> See, *Comments of the California Community Choice Association to the California Energy Commission on the Draft Staff Report*, Docket Log (DL) 19-OIR-01 (June 4, 2021) (CalCCA June 4, 2021 Comments); *California Community Choice Association’s Comments on the Proposed Amendments to the Load Management Standards Contained in the California Code of Regulations, Title 20*, DL 21-OIR-03 (Feb. 7, 2022) (CalCCA Feb. 7, 2022 Comments).

<sup>3</sup> Cal. Pub. Res. Code § 25403.5.



structure to encourage use of electrical energy at off-peak hours or to encourage control of daily electrical load.”<sup>4</sup> A “service area” is defined in the PRC as “any contiguous geographic area serviced by the same electric utility.”<sup>5</sup> As recognized by the Commission’s 15-Day Proposed Amendments removing CCAs from the definition of “Utility,” CCAs are not “electric utilities.” Instead, the Commission contends that because CCAs operate within the geographical service territories of electric utilities, the LMS apply to CCAs that provide electricity to customers within these service territories.<sup>6</sup>

As CalCCA has explained in detail, the proposed LMS overstep the Commission’s jurisdictional boundaries.<sup>7</sup> Specifically:

- PRC section 25403.5 has never been amended to expressly apply to or include CCAs within the LMS, despite the legislature imposing obligations on CCAs in other PRC sections;<sup>8</sup>
- The Amendments unlawfully sweep CCAs into the load management standards generally, and step squarely into the ratemaking arena, requiring CCAs to implement a very specific rate methodology;<sup>9</sup>

<sup>4</sup> *Id.*, § 25403.5(a)(1).

<sup>5</sup> *Id.*, § 25118.

<sup>6</sup> Final Staff Report at 17.

<sup>7</sup> See CalCCA June 4, 2021 Comments; CalCCA Feb. 7, 2022 Comments.

<sup>8</sup> PRC section 25403.5 was originally enacted to require a utility to certify that it was in compliance with the LMS before the Commission would approve sites for a new power plant to effectively coordinate new capacity with load needs. Cal. Pub. Res. Code § 25403.5(e) (1976) (amended in 1980 through AB 3062 (stats. 1980) to eliminate a penalty clause, and to add a forecast reporting requirement for electric utilities). Senate Bill (SB) 1389 (stats. 2002) shifted forecast reporting requirements to the Integrated Energy Policy Report (IEPR). Notably, the direction for electric utilities to report on load management standards was eliminated, but PRC section 25302.5(a) did allow the Commission to require in the IEPR “submission of demand forecasts, resource plans, market assessments, and related outlooks from electric . . . utilities, . . . and other market participants,” including CCAs. Therefore, the IEPR process established in 2002 expressly includes CCAs, but the load management standards (adopted before the creation of CCAs) were never amended to include CCAs.

<sup>9</sup> See Proposed LMS Regulations, § 1623(a) (requiring utilities and CCAs to develop “marginal cost-based rates,” 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, including social costs, on a time interval of no more than one hour. Energy cost computations shall reflect locational marginal pricing as determined by the associated balancing

- The Commission’s mandate of a specific rate methodology in the LMS infringes on CCA governing boards’ exclusive ratemaking approval authority established in 2002 by Assembly Bill (AB) 117;<sup>10</sup>
- The Final Staff Report acknowledges that the Commission does not have rate approval authority over CCAs;<sup>11</sup> and
- The LMS unlawfully provides the Commission, and not CCA governing boards, the right to impose injunctive relief or impose penalties on CCAs that do not comply with the LMS.<sup>12</sup>

CCAs share the goals of facilitating load management activities by consumers that reduce peak electricity demand, helping to balance electricity supply and demand to support grid reliability and providing clean and affordable electricity services to Californians. However, the Commission does not have the authority to mandate CCA compliance with the LMS. To resolve the Commission’s jurisdictional overreach, including the unlawful infringement on CCA rate autonomy and operations, the Commission should revise the 15-Day Proposed Amendments to apply the LMS regulations, including the marginal cost rate requirements, to CCAs on a *voluntary basis*.

authority, such as the California Independent System Operator, the Balancing Authority of Northern California, or other balancing authority. Marginal cost computations shall reflect variations in the probability and value of system reliability of each component (generation, transmission, and distribution). Social cost computations shall reflect, at a minimum, the locational marginal cost of associated greenhouse gas emissions.”).

<sup>10</sup> AB 117, Stats. 2002; ch. 838 (codified at Cal. Pub. Util. Code § 366.2(c)(3)).

<sup>11</sup> 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 . . .”).

<sup>12</sup> See Proposed LMS Regulations, § 1623(a) (“[t]his standard requires that each . . . CCA develop marginal cost-based rates structured according to the requirements of this article and that the . . . CCA submit such rates to its rate-approving body for approval”); § 1621(f) (“[t]he Executive Director may, after reviewing the matter with the . . . CCA, file a complaint with the Commission . . . or seek injunctive relief if a . . . CCA: (1) fails to adhere to its approved load management standard plan, . . . or (5) violates the provisions of this article.”).

### **III. OTHER FLAWS IN THE LMS CREATE BARRIERS TO EVEN VOLUNTARY CCA PARTICIPATION**

#### **A. The 15-Day Proposed Amendments Adequately Address CalCCA’s Request to Remove CCAs From the Definition of “Utility” and Limit LMS Application to Sections 1621 and 1623**

The 15-Day Proposed Amendments remedy one “flaw” CalCCA has identified in comments by removing CCAs from the definition of “Utility.”<sup>13</sup> The regulations as originally proposed would have effectively incorporated CCAs into 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). In addition, the expanded definition of “Utility” to include CCAs would have set a precedent for any future regulations promulgated under the CEC’s load management authority. The 15-Day Proposed Amendments remedy these concerns by: (1) modifying section 1621(b) to explicitly state that CCAs are not subject subsections 1622, 1624, and 1625 of Article 5; and (2) removing CCAs from the definition of “Utility” in section 1621(c)(17). In addition, the 15-Day Proposed Amendments modify sections 1621 and 1623 to incorporate the changes to the application of the regulations and the definition of “Utility.”

In addition, while CalCCA does not agree with section 1621(b)’s statement that the standards are “technologically feasible and cost-effective” (as explained in more detail below), to remain consistent with the other sections removing CCAs from the definition of “Utility,” the Commission should change the word “including” in the last sentence of the section to “and”:

The 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~~ and CCAs operating within the service areas of such electric utilities.

<sup>13</sup> See CalCCA June 4, 2021 Comments at 2-3; CalCCA Feb. 7, 2022 Comments at 10-11.

With this minor change, the 15-Day Proposed Amendments resolve CalCCA's objection to including CCAs in the definition of "Utility."

**B. CCAs Cannot Implement an Hourly Locational Marginal Cost-Based Rate Until the IOUs Develop the Data and Billing Systems to Incorporate That Rate**

Despite the 15-Day Proposed Amendments' fix of the definitional issues, they overlook an issue of timing. The LMS requires marginal cost-based rates for all rate elements – transmission, distribution, and generation. For CCA customers, their bills will combine the IOU's marginal cost rate for distribution and transmission with the CCA's marginal cost rate for generation. Requiring CCAs and IOUs to develop rates contemporaneously for all three elements risks a disconnection between the marginal rates for different rate elements. Asking CCAs to develop and implement rates only once the IOUs have approved transmission and distribution components would enable load-serving entities (LSE) to align the approach for all three elements.

A sequential development of rates – transmission/distribution followed by generation – also addresses another problem. Currently, the data received from the IOUs contains significant gaps that do not allow for the receipt of real-time access to interval data to view CCA load. In addition, because IOUs bill the customers after receiving the generation component from CCAs, the IOUs cannot bill for the rate until they develop the appropriate billing systems. As noted in Southern California Edison Company's (SCE) February 7, 2002 comments, the timeframe for SCE to develop the framework for rolling out real-time pricing for one class of customers to align "with SCE's current IT and billing infrastructure" is eight years.<sup>14</sup> As SCE notes, "[a]ppropriate time is needed to ensure success with executing this framework and the

<sup>14</sup> *Southern California Edison's Comments on the California Energy Commission (CEC) Docket No. 21-OIR-03, Southern California Edison (SCE) Written Comments on Proposed Regulatory Language for the Load Management Standards Regulations* (Feb. 7, 2022), at 1-2.

accompanying regulatory decision-making process.”<sup>15</sup> CCAs can only implement such a rate after the IOUs complete their IT and billing infrastructure upgrades to handle such a rate. Therefore, from a technical feasibility perspective, implementation by CCAs of the rate prescribed in the LMS regulations is many years off and will depend on the IOU implementation of their rates through upgrades to their data and billing systems.<sup>16</sup>

**C. The Finding That CCA Costs to Implement the LMS are Negligible is Unsubstantiated**

The Commission’s statements regarding the costs associated with incorporating CCAs into the LMS are unsubstantiated. Section 1622(h) of the 15-Day Proposed Amendments states that:

There shall be no reimbursement to local government entities for the costs of carrying out the programs mandated by these standards, because the Commission has found these standards to be cost-effective. The savings which these entities will realize as a result of carrying out these programs will outweigh the costs associated with implementing these programs.<sup>17</sup>

The CEC's assumption that the rates developed pursuant to the LMS will be “cost-effective” for CCAs is not supported by the record. In fact, the Final Staff Report includes the fiscal impact for Publicly-Owned Utilities (POUs) as local governmental entities, but not CCAs.<sup>18</sup> Given the complexity and data-driven nature of the rate prescribed in the LMS, however, there will be significant costs associated with developing a proposal to present to a CCA board. Once presented, the Board may not adopt the proposal. In such a case, there is no way to recover the

<sup>15</sup> *Id.* at 2.

<sup>16</sup> In addition, in the event CCAs can voluntarily comply with the LMS, the Commission should ensure that the rate structure, including the definition of marginal cost-based rates, is not overly prescriptive in nature and allows for innovation in rate design. CCAs and other LSEs should maintain flexibility to create innovative and cost-effective rates that reflect their specific marginal costs and customer needs.

<sup>17</sup> 15-Day Proposed Amendments § 1622(h).

<sup>18</sup> Final Staff Report at 77-78 (Tables 15-16).

costs for developing the proposal. The CEC's fiscal impact analysis also failed to account for the significant implementation costs associated with billing system upgrades. These costs would be especially more burdensome for smaller CCAs, whose load shares are more comparable to smaller POUs. The Commission has therefore not properly evaluated the cost-effectiveness of developing these rates for CCAs.

As the Commission has not adequately substantiated its claims that the implementation of the LMS would be cost effective for CCAs, the Commission should also clarify that section 1622(h) of the proposed LMS does not expressly preclude CCAs from seeking cost recovery from all ratepayers for implementation of the LMS with the California Public Utilities Commission. As CCAs would be developing their own marginal cost-based generation rates, there would necessarily be costs to develop the rates and infrastructure necessary to implement and bill for such rates. If the IOUs and CCAs are both developing these systems, attention must be paid to the cost recovery mechanisms of both the IOUs *and* CCAs to ensure that customers are not paying twice for the implementation of the LMS. Any determination of the reasonableness of cost recovery mechanisms must not be prejudiced by the language adopted in the LMS.

In addition, the Final Staff Report states that:

[t]he CEC assumes that CCAs in IOU service territories will pass through the hourly tariffs that are developed and implemented by the IOU in whose service territory they are located. This implementation strategy is projected to result in no direct costs or benefits for the CCAs but will be most aligned with grid needs. CCAs' customers will benefit from energy costs reduction. CCAs' reporting effort is expected to be negligible as CCAs only need to inform CEC about the hourly tariffs they pass through from their respective IOU.<sup>19</sup>

<sup>19</sup> *Id.* at 78.

CCAs do not “pass through” rates from the IOUs. CCAs have their own generation rates, developed by the CCAs and approved by the CCA governing boards. CCA rates compete with IOU generation rates. CCAs provide their generation rates to the IOUs, who bill CCA customers by adding their transmission and distribution rates. CCA rate design requires significant effort and cost, similar to IOU rate design. Further, the regulations describe rates that are approved by a CCA's governing board. However, CCA governing boards have no authority to approve IOU rates. The CCAs cannot simply rely on IOU rates to comply with the plain language of the regulation.

#### **IV. THE COMMISSION HAS INCLUDED CCAS WHILE ARBITRARILY EXCLUDING ESPS AND SMALL POUS FROM THE LMS**

The proposed regulations apply to the IOUs, specific large POUs, and all CCAs.<sup>20</sup> Curiously absent from the list of LSEs required to comply with the LMS are ESPs and small POUs. CalCCA questions why the Commission excluded ESPs when they served ten percent of California's load in 2021.<sup>21</sup> Small POUs together also serve a substantial portion of California's load. The Final Staff Report states that part of the reason it includes CCAs within the reach of its LMS is because “any other interpretation would diminish the effectiveness of the proposed amendments to the [LMS] and defeat the purpose of the statute.”<sup>22</sup> The same can be said of ESPs and small POUs. The proposed regulations' exclusion of ESPs and small POUs may be interpreted as an arbitrary and capricious omission that should be explained. The Commission must apply the LMS even-handedly among all LSEs operating in the same service area to ensure consistency and competitiveness.

<sup>20</sup> Proposed Amendments § 1621(b).

<sup>21</sup> *California Energy Demand 2021-2035 Baseline Forecast - Mid Demand Case*, January 2022.

<sup>22</sup> Final Staff Report at 17.

**V. CONCLUSION**

CalCCA looks forward to further collaboration on this topic.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Evelyn Kahl".

Evelyn Kahl  
General Counsel and Director of Policy  
CALIFORNIA COMMUNITY CHOICE  
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April 20, 2022



<b>DOCKETED</b>	
<b>Docket Number:</b>	21-OIR-03
<b>Project Title:</b>	2022 Load Management Rulemaking
<b>TN #:</b>	244172
<b>Document Title:</b>	California Community Choice Association Comments - on the Proposed Revision to the Load Management Standards
<b>Description:</b>	N/A
<b>Filer:</b>	System
<b>Organization:</b>	California Community Choice Association
<b>Submitter Role:</b>	Public
<b>Submission Date:</b>	7/21/2022 4:58:34 PM
<b>Docketed Date:</b>	7/21/2022

*Comment Received From: California Community Choice Association*  
*Submitted On: 7/21/2022*  
*Docket Number: 21-OIR-03*

**on the Proposed Revision to the Load Management Standards**

*Additional submitted attachment is included below.*

**STATE OF CALIFORNIA ENERGY RESOURCES  
CONSERVATION AND DEVELOPMENT COMMISSION**

In the Matter of:

2022 Load Management Rulemaking

Docket No. 21-OIR-03

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S COMMENTS  
ON THE PROPOSED REVISIONS TO THE LOAD MANAGEMENT STANDARDS  
(NOTICE OF SECOND 15-DAY PUBLIC COMMENT PERIOD)**

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**STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION AND  
DEVELOPMENT COMMISSION**

In the Matter of:

2022 Load Management Rulemaking

Docket No. 21-OIR-03

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S COMMENTS  
ON THE PROPOSED REVISIONS TO THE LOAD MANAGEMENT STANDARDS  
(NOTICE OF SECOND 15-DAY PUBLIC COMMENT PERIOD)**

The California Community Choice Association<sup>1</sup> (CalCCA) submits these Comments pursuant to the Notice of Proposed Action (NOPA) with proposed amendments to the Load Management Standards (LMS), California Code of Regulations (CCR), Title 20, Division 2, Chapter 4, Article 5, dated December 24, 2021; and Notice of Second 15-Day Public Comment Period, Proposed Revisions to the Load Management Standards, dated July 8, 2022 (Second Notice).

**I. INTRODUCTION**

CalCCA appreciates the continued efforts of the California Energy Commission (Commission) to address stakeholder concerns set forth in comments on the proposed Load Management Standard (LMS) regulations. Of particular concern, however, is that the core jurisdictional issues raised by CalCCA in its comments have not been addressed.<sup>2</sup> Specifically, the

<sup>1</sup> California Community Choice Association represents the interests of 23 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, Orange County Power Authority, 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.

<sup>2</sup> See *Comments of the California Community Choice Association to the California Energy Commission on the Draft Staff Report*, Docket 19-OIR-01 (June 4, 2021) (CalCCA June 4, 2021 Comments); *California Community Choice Association's Comments on the Proposed Amendments to the Load Management Standards Contained in the California Code of Regulations, Title 20*, Docket 21-OIR-03 (Feb. 7, 2022) (CalCCA Feb. 7, 2022 Comments); *California Community Choice Association's*

Commission lacks jurisdiction: (1) to mandate community choice aggregator (CCA) participation in the LMS, and (2) to require CCAs to adopt the prescribed marginal cost rates. While the Commission claims jurisdiction to mandate CCA participation in the LMS pursuant to Public Resources Code (PRC) section 25403.5, the explicit and clear language of the statute, as well as the legislative history, confirm that the Legislature did not intend for CCAs to be included.<sup>3</sup> In addition, the Commission concedes that it lacks authority to mandate CCA rates given Assembly Bill (AB) 117's grant of exclusive authority to CCA local governing boards to approve rates.<sup>4</sup> However, the Final Staff Report states that the LMS does not mandate rate design but rather prescribes "overarching structural features" of rates for which the Commission claims it has the authority to mandate.<sup>5</sup> To the contrary, nothing could be closer to rate design than, as the Commission proposes, requiring CCAs to implement *hourly variable* rates based not only on marginal costs, but *specific marginal costs*. Mandating these detailed elements of rate design encroaches on the ratemaking authority of CCA governing boards.

The Commission's beneficial goals for its regulations do not justify this unlawful encroachment. The regulations aim 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."<sup>6</sup> The Commission has set its sights on adoption by certain load-

*Comments on the Proposed Revisions to the Load Management Standards*, Docket 21-OIR-03 (Apr. 20, 2022) (CalCCA Apr. 20, 2022 Comments).

<sup>3</sup> See 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 16-17.

<sup>4</sup> *Id.* at 17.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*, Abstract at iii.

serving entities (LSEs), including CCAs, of hourly locational marginal cost rates.<sup>7</sup> A beneficial goal, however, does not justify an overreach of jurisdictional authority. Moreover, the Commission has another option – a voluntary program that allows local governing boards to determine how they will address real-time rates – but has rejected this approach. For the reasons set forth below, the Commission should either remove CCAs from the application of the LMS regulations, or make CCA participation voluntary:

- The Commission lacks statutory authority, under Public Resource Code section 25403.5 or any other statute, to mandate CCA participation in the LMS program;
- The Commission’s requirement that CCAs adopt its prescription rate design for hourly locational marginal cost rates infringes on CCA exclusive ratemaking authority established in 2002 by AB 117; and
- Even if the Commission modifies the LMS to allow CCA participation on a voluntary basis, CCAs cannot implement an hourly locational marginal cost-based rate until the IOUs develop the data and billing systems to incorporate that rate.

## **II. THE COMMISSION DOES NOT HAVE STATUTORY AUTHORITY TO MANDATE CCA PARTICIPATION IN ITS LOAD MANAGEMENT STANDARDS**

As explained in detail in CalCCA’s prior comments, the Commission’s interpretation of PRC section 25403.5 to include CCAs in the LMS constitutes legal error.<sup>8</sup> Section 25403.5 provides that “[t]he commission shall . . . adopt standards by regulation for a program of electrical load management for each utility service area.”<sup>9</sup> “Service Area” is defined as “any contiguous geographic area serviced by the same electric utility.”<sup>10</sup>

<sup>7</sup> On the other hand, electric service providers (ESPs) and publicly owned utilities (POUs) other than LAWD and SMUD are not mandated to comply with the LMS, despite their serving a substantial portion of the load. *See* CalCCA April 20, 2022 Comments, at 9.

<sup>8</sup> *See* CalCCA June 4, 2021 Comments at 3-5; CalCCA Feb. 7, 2022 Comments at 5-8; CalCCA Apr. 20, 2022 Comments at 2-4.

<sup>9</sup> Cal. Pub. Res. Code § 25403.5(a).

<sup>10</sup> *Id.* § 25118.

The Final Staff Report cites as support for its inclusion of CCAs that:

1. CCAs operate within the geographical service territories of electric utilities, and therefore the load management standards apply to CCAs that provide electricity to customers within these service areas;
2. For the load management standards to function in a manner that meets the intent of the statute, the standards must apply to most electric customers; and
3. To the extent CCA service is the default provider and continues to expand in California, any other interpretation would diminish the effectiveness of the proposed amendments . . . and defeat the purpose of the statute.<sup>11</sup>

As set forth more fully below, the Commission's interpretation of section 25403.5 is inconsistent with the laws of statutory construction.

Any final interpretation of a statute is a question of law and rests with the courts.<sup>12</sup> In fact, a California court has specifically found that a Commission decision construing PRC sections 25500 and 25123 issued many years after the passage of the statute is *not* entitled to great weight.<sup>13</sup> Accordingly, proper statutory construction requires a review of methods utilized by courts to determine statutory meaning.

First, the California Supreme Court requires courts to look to "ascertain the intent of the Legislature so as to effectuate the purpose of the law."<sup>14</sup> A court must look first to the *explicit language*, explained as:

the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided. The words of the statute must be construed in context, keeping in mind the statutory purpose,

<sup>11</sup> Final Staff Report at 17.

<sup>12</sup> *Department of Water and Power, City of Los Angeles v. Energy Resources Conservation and Development Commission*, 2 Cal.App.4<sup>th</sup> 206, 296-297(1992) (rejecting the Commission's contention that the appellate court must defer to its administrative interpretation of Public Resources Code sections 25500 and 25123 when although its interpretation was a case of first impression, the decision was issued in 1990 interpreting a 1974 statute and therefore was not a "contemporaneous construction of a new enactment by the administrative agency charged with its enforcement" which would be entitled to "great weight") (citing *Dyna-Med, Inc. v. Fair Employment & Housing Commission* (1987) 43 Cal.3d 1379, 1388)).

<sup>13</sup> *Ibid.*

<sup>14</sup> *Dyna-Med, Inc.*, 43 Cal.3d at 1386.



and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible.<sup>15</sup>

Here, the Commission's expansive interpretation of PRC section 25403.5 to include CCAs based on its hopes for success with the Market Informed Demand Automation Server (MIDAS) system and the proposed amendments places the cart before the horse. The explicit statutory language specifically allows the Commission to adopt LMS for each "utility service area," and the definition of "utility" does *not* expressly incorporate CCAs.<sup>16</sup>

In addition, the *context* of section 25403.5's adoption in 1976, when the LMS were adopted as a requirement for a utility prior to siting a new power plant, demonstrates that the LMS are intended to apply only to utilities.<sup>17</sup> CCAs were not created until 2002, and therefore the original enactment of PRC section 25403.5 did not include CCAs. The context has also changed dramatically, from all generation being built by regulated utilities (as was the case in 1976), to a generation market where the utilities, other LSEs, and developers procure, build, and own generation. Perhaps most importantly, CCAs have never been added as an entity subject to its requirements.

In addition, consideration of *all* of the language in PRC section 25403.5 suggests that the Commission's ability to consider any adjustments to rate structure as a load management technique applies *only* to entities subject to rate jurisdiction of the California Public Utilities Commission (CPUC).<sup>18</sup> CCA rates are not approved or regulated by the CPUC, but rather by CCA local

<sup>15</sup> *Id.* at 1386-87 (citations omitted).

<sup>16</sup> Cal. Pub. Res. Code §§ 25108 (definition of "electric utility"), 25118 (definition of "service area").  
<sup>17</sup> AB 4195 (1976).

<sup>18</sup> *See, e.g.*, Cal. Pub. Res. Code § 25403.5(a)(1) (allowing the Commission to consider adjustments in rate structure as a load management technique, but stating that "[c]ompliance with those adjustments in rate structure shall be subject to the approval of the Public Utilities Commission in a proceeding to change rates or service"); *see also* Cal. Pub. Res. Code 25403.5(b) (requiring that the LMS be "cost-effective when compared with the costs for new electrical capacity" and that "[a]ny expense or any capital

governing bodies.<sup>19</sup> Therefore, harmonizing the statutory language clearly demonstrates that CCAs, not subject to CPUC ratemaking authority, were not meant to be included within the reach of PRC section 25403.5.

Second, even if the explicit meaning of a statute remains uncertain, the Court requires a review of the legislative history to determine the legislative intent.<sup>20</sup> Here, the explicit language is *not* uncertain, as described above. However, a review of the legislative history of PRC section 25403.5, which includes amendments up through 2002, further demonstrates that the Legislature *did not intend* for CCAs to be included within the statute's reach. In fact, the legislative history suggests that amendments to the load management standards program over time narrowed the LMS program's scope: (1) to *remove* authority from the CEC regarding penalties and requirements under the LMS; and (2) to *consolidate reporting requirements*, including those involving CCAs, in the IEPR process while removing those reporting requirements from section 25403.5.<sup>21</sup> Therefore, while the Legislature *could have* added CCAs to the entities subject to the Commission's LMS while it

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").

<sup>19</sup> See *Decision Resolving Phase 2 Issues on Implementation of Community Choice Aggregation Program and Related Matters*, R.03-10-003 (Oct. 2, 2003) at 9, 42 (the legislature did "not require the [CPUC] to set CCA rates or regulate the quality of its services," and has "consistently treated CCAs as stand-alone operations with ratemaking discretion").

<sup>20</sup> *Dyna-med, Inc.*, 43 Cal.3d at 1327.

<sup>21</sup> Cal. Pub. Res. Code § 25403.5 was originally enacted to require a utility to certify that it was in compliance with the LMS before the Commission would approve sites for a new power plant to effectively coordinate new capacity with load needs. Cal. Pub. Res. Code § 25403.5(e) (1976) (amended in 1980 through AB 3062 (stats. 1980) to eliminate a penalty clause, and to add a forecast reporting requirement for electric utilities). Senate Bill (SB) 1389 (stats. 2002) shifted forecast reporting requirements to the Integrated Energy Policy Report (IEPR). Notably, the direction for electric utilities to report on load management standards was eliminated, but PRC section 25302.5(a) did allow the Commission to require in the IEPR "submission of demand forecasts, resource plans, market assessments, and related outlooks from electric . . . utilities, . . . and other market participants," including CCAs. Therefore, the IEPR process established in 2002 expressly includes CCAs, but the load management standards (adopted before the creation of CCAs) were never amended to include CCAs.

amended section 25403.5, *or* while it incorporated requirements for CCAs in other sections of the PRC, it did not.<sup>22</sup>

In addition, to reflect changing market structures, the Legislature has routinely updated both the PRC and Public Utilities Code to reflect and include new market participants. This includes but is not limited to the Legislature's creation of the new categories of "load-serving entities" for Resource Adequacy and "retail supplier" for the Power Content Label requirements enforced by the CEC.<sup>23</sup> Most recently, the Legislature adopted AB 205 which provides a specific list of entities, which include CCAs, eligible for the Demand Side Grid Support Program, administered by the Commission.<sup>24</sup> The Legislature has taken no similar action adding CCAs to the application of the 1976 load management standards.

According to the laws of statutory construction, PRC section 25403.5 does not explicitly or implicitly grant the Commission jurisdictional authority to mandate CCA compliance with its proposed LMS regulations. Therefore, the Commission should either remove CCAs from the regulations, or allow CCA voluntary compliance with the regulations.

### **III. THE COMMISSION LACKS AUTHORITY TO MANDATE CCA RATES**

The Commission also lacks authority to mandate that CCAs adopt a particular rate design. The Commission acknowledges its lack of "exclusive or independent authority" to require CCA adoption of a particular rate. However, it insists that the rate required by the proposed LMS

<sup>22</sup> See *Gikas v. Zolin* (1993) 6 Cal.4<sup>th</sup> 841, 852 (citing the maxim of statutory construction, *expressio unius est exclusion alterius* – that "[t]he expression of some things in a statute necessarily means the exclusion of other things not expressed"); see also *Dyna-Med, Inc.*, 43 Cal.3d at 1391 (stating that the *expressio unius* doctrine can be used as a guide when a statute is ambiguous).

<sup>23</sup> See Cal. Pub. Util. Code § 380 (establishing that the California Public Utilities Commission shall establish RA requirements for *all* load-serving entities, including CCAs); see also Cal. Pub. Util. Code § 398.2 (including CCAs within the definition of a "Retail Supplier" subject to the power content label requirements).

<sup>24</sup> Cal. Pub. Res. Code § 25792(b).

regulations is simply a “rate structure” and CCA governing boards retain ultimate approval authority.<sup>25</sup> However, as discussed in CalCCA’s prior comments, the proposed regulations go far beyond a “rate structure.” A rate “structure” could be, for example, time-differentiated rates, leaving LSEs the flexibility to design rates that meet this objective. What the regulations propose to do -- requiring an hourly variable rate using specific marginal costs -- steps into the scope of “rate design.” Furthermore, the Commission retains ultimate enforcement authority for failure to comply with the regulations.<sup>26</sup> As a result, even if the Commission has jurisdiction to require CCA compliance with the LMS (which it does not), the proposed regulations constitute an unlawful infringement on CCA ratemaking authority provided by AB 117.

#### **IV. EVEN IF THE COMMISSION SEEKS VOLUNTARY PARTICIPATION BY CCAS IN ITS LOAD MANAGEMENT PROGRAM, THE CURRENT STANDARDS ARE CURRENTLY TECHNOLOGICALLY INFEASIBLE**

Finally, if the Commission seeks voluntary CCA participation in its LMS given its lack of statutory authority to mandate CCA participation, implementation of the regulations is currently technologically infeasible for CCAs. As explained in prior CalCCA comments, CCAs cannot implement an hourly locational marginal cost-based rate until the IOUs develop the data and billing systems to incorporate the CCA rate.<sup>27</sup> For CCA customer bills, the IOUs receive from the CCAs the generation rate information to incorporate into the bills, and the IOUs then send the bills out incorporating their transmission and distribution rates. Therefore, until the IOUs establish their own data and billing systems to implement the LMS, CCA customers will not be billed for the CCA generation portion and cannot even voluntarily participate in the LMS.

<sup>25</sup> Final Staff Report at 17.

<sup>26</sup> See CalCCA Feb. 7, 2022 Comments at 8-10.

<sup>27</sup> See CalCCA April 20, 2022 Comments at 6-7.

**V. CONCLUSION**

For the reasons set forth above, CalCCA requests that the Commission either remove CCAs from the proposed LMS regulations or allow voluntary participation in the LMS.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Evelyn Kahl".

Evelyn Kahl,  
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ASSOCIATION

July 21, 2022

<b>DOCKETED</b>	
<b>Docket Number:</b>	21-OIR-03
<b>Project Title:</b>	2022 Load Management Rulemaking
<b>TN #:</b>	246220
<b>Document Title:</b>	California Community Choice Association Comments - on the Proposed Amendments to the Load Management Standards
<b>Description:</b>	N/A
<b>Filer:</b>	System
<b>Organization:</b>	California Community Choice Association
<b>Submitter Role:</b>	Public
<b>Submission Date:</b>	9/27/2022 4:28:47 PM
<b>Docketed Date:</b>	9/27/2022

*Comment Received From: California Community Choice Association*  
*Submitted On: 9/27/2022*  
*Docket Number: 21-OIR-03*

**on the 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:

2022 Load Management Rulemaking

Docket No. 21-OIR-03

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S COMMENTS  
ON THE PROPOSED AMENDMENTS TO THE LOAD MANAGEMENT  
STANDARDS, CALIFORNIA CODE OF REGULATIONS, TITLE 20  
(NOTICE OF THIRD 15-DAY PUBLIC COMMENT PERIOD)**

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September 27, 2022



**STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION AND  
DEVELOPMENT COMMISSION**

In the Matter of:

2022 Load Management Rulemaking

Docket No. 21-OIR-03

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION’S COMMENTS  
ON THE PROPOSED AMENDMENTS TO THE LOAD MANAGEMENT  
STANDARDS, CALIFORNIA CODE OF REGULATIONS, TITLE 20  
(NOTICE OF THIRD 15-DAY PUBLIC COMMENT PERIOD)**

The California Community Choice Association<sup>1</sup> (CalCCA) submit these Comments pursuant to the *Notice of Proposed Action (NOPA) With Proposed Amendments to the Load Management Standards (LMS), California Code of Regulations (CCR), Title 20, Division 2, Chapter 4, Article 5*, dated December 24, 2021, and *Notice of Third 15-Day Public Period* (Third Notice), dated September 12, 2022.

**I. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS**

CalCCA appreciates the continued efforts of the California Energy Commission (Commission) to address stakeholder concerns with the proposed load management standards (LMS). Revisions to the LMS Regulations in the Third Notice that impact CCAs include: (1) limiting the application of the regulations to “Large CCAs”; (2) allowing CCAs to first seek

<sup>1</sup> California Community Choice Association represents the interests of 23 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, Orange County Power Authority, 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.

approval of their compliance plans, rates and programs from their rate-approving bodies; (3) continuing to require the development and request for approval from CCA rate-approving bodies of the prescribed marginal cost rates, despite allowing CCAs to seek approval from the Commission of rates *or* programs enabling automated response to marginal cost signals; and (4) providing additional time for LMS compliance for CCAs.

The revised regulations, as well as all prior revisions, fail to remedy the jurisdictional overreach by the Commission *mandating* that CCAs comply with the LMS. As set forth in CalCCA's prior comments, the core jurisdictional problem is clear – the Commission has no explicit or implicit authority under the LMS implementing statute, California Public Resources Code section 25403.5, or any other statute, to require CCA participation in the LMS.<sup>2</sup> In addition, the LMS, even as revised, infringes on CCA rate autonomy.<sup>3</sup> Given these issues, the Commission should either remove CCAs from the application of the LMS regulations, or make CCA participation voluntary.

## **II. THE PROPOSED CHANGES DO NOT REMEDY THE COMMISSION'S JURISDICTIONAL OVERREACH AND INFRINGE ON CCA RATE AUTONOMY**

This third round of revisions to the proposed LMS regulations continue to fail to remedy the Commission's jurisdictional overreach and infringement on CCA rate autonomy. As set forth below, the proposed changes: (1) fail to remedy the jurisdictional overreach by restricting

<sup>2</sup> See *Comments of the California Community Choice Association to the California Energy Commission on the Draft Staff Report*, Docket 19-OIR-01 (June 4, 2021); *California Community Choice Association's Comments on the Proposed Amendments to the Load Management Standards Contained in the California Code of Regulations, Title 20*, Docket 21-OIR-03 (Feb. 7, 2022); *California Community Choice Association's Comments on the Proposed Revisions to the Load Management Standards*, Docket 21-OIR-03 (Apr. 20, 2022); *California Community Choice Association's Comments on the Proposed Revisions to the Load Management Standards (Notice of Second 15-Day Public Comment Period)*, Docket 21-OIR-03 (July 21, 2022).

<sup>3</sup> See *id.*

the application of the regulations to “Large CCAs”; (2) do not alter the Commission’s ultimate enforcement authority by allowing CCAs to first seek approval of their compliance plans, or rates and programs, from their rate-approving bodies; and (3) continue to infringe on CCA rate autonomy by requiring the *development of and application to CCA rate-approving bodies for a prescriptive marginal cost rate*, even if the CCA ultimately seeks from the Commission approval of a program instead of a rate.

**A. Restricting the Application of the Regulations to “Large CCAs” Does Not Remedy the Commission’s Jurisdictional Overreach**

Limiting the application of the regulations to “Large CCAs,” or CCAs that provide in excess of 700 gigawatt-hours of electricity to customers in any calendar year, does not remedy the Commission’s jurisdictional overreach or infringement on CCA rate autonomy. In fact, most CCAs will still fall within the application of the LMS regulations, despite the Commission’s lack of statutory jurisdiction to require CCA participation. As a result, the revision to restrict the application of the LMS to “Large CCAs” fails to remedy the overreach by the Commission.

**B. The Commission Retains Ultimate Enforcement Authority Even Though the Revised Regulations Allow CCAs to Seek Initial Approval from Their Rate-Approving Bodies of Compliance Plan and Rates/Programs**

Despite the revision of the “compliance path” to allow CCAs to seek approval of their plans, rates and programs from their rate-approving body prior to seeking approval from the Commission, the Commission’s ultimate enforcement authority over all parts of the LMS regulations remains intact in section 1623.1(d). Therefore, even if a CCA rate-approving body approves a plan, rate or program, the Commission retains authority to require changes, and the Commission’s Executive Director retains the ability to file a complaint for non-compliance with

the Commission, or to seek injunctive relief.<sup>4</sup> In all cases, the Commission oversteps its jurisdictional authority and infringes upon the rate autonomy of CCA rate-approving bodies.

**C. The Revised Regulations Continue to Infringe on CCA Rate Autonomy by Requiring the Development and Application to CCA Rate-Approving Bodies of a Prescriptive Marginal Cost Rate**

The revised LMS regulations continue to infringe on CCA rate autonomy as set forth in CalCCA’s previous comments. The revisions will allow CCAs to offer either marginal cost rates *or* programs to achieve the goals of the LMS.<sup>5</sup> However, section 1623.1(b)(2) still mandates that:

Within . . . twenty-seven (27) months of the effective date of these regulations each Large CCA, *shall apply* to its rate-approving body for approval of at least one marginal cost-based rate, that meets the requirements of Subsection 1623.1(b)(1).<sup>6</sup>

Therefore, CCAs can now *offer* an approved rate *or* program to its customers within fifty-one (51) months of the regulations. However, Large CCAs must still *develop and apply for* approval from its rate approving body of the prescriptive marginal cost-based rate described in section 1623.1(b)(1). Therefore, the revised regulations continue to infringe on the rate authority of CCAs by requiring CCAs to develop and request approval for a rate design prescribed by the Commission.

<sup>4</sup> Third Revised LMS Regulations, § 1623.1(d).

<sup>5</sup> Section 1621 requires entities subject to the LMS offer rates *or programs*. In addition, section 1623.1(a)(1)(A) requires a plan to be submitted within one year of the effective date of the regulations, approved by the CCA rate approving body, and then submitted to the Commission for approval. The plan shall “evaluate cost effectiveness, equity, technological feasibility, benefits to the grid, and benefits to customers of marginal cost-based rates for each customer class.” If, after consideration of these factors, a CCA’s plan does not propose development of marginal cost-based rates, section 1623.1(a)(1)(B) requires the plan to “propose *programs* that enable automated response to marginal cost signal(s) for each customer class and evaluate them based on their cost-effectiveness, equity, technological feasibility, benefits to the grid, and benefits to customers.” (Emphasis supplied)

<sup>6</sup> *Id.*, § 1623.1(b)(2) (emphasis supplied).

### **III. LENGTHENING THE TIME FOR CCA COMPLIANCE PROVIDES FLEXIBILITY IN THE EVENT A CCA VOLUNTARILY PARTICIPATES IN THE LMS**

While for the reasons set forth above and in CalCCA's previous comments the Commission cannot require CCA participation in the LMS program, the revisions providing additional time for CCAs to comply will provide flexibility in the event a CCA decides to voluntarily participate. As explained in prior CalCCA comments, CCAs cannot implement an hourly locational marginal cost-based rate until the IOUs develop the data and billing systems to incorporate the CCA rate. Therefore, delaying CCA participation until after the IOUs develop their own rates and programs will allow the appropriate systems to be in place to ensure that CCAs can actually implement the LMS provisions *if they choose to do so*.

### **IV. CONCLUSION**

For the reasons set forth herein and in CalCCA's previous comments in this proceeding, CalCCA requests that CCAs be removed from the application of the LMS regulations due to the Commission's lack of jurisdiction to mandate CCA participation. In the alternative, the Commission should make CCA participation voluntary. CalCCA appreciates Commission Staff's efforts in Docket 21-OIR-03 and looks forward to further collaboration on this topic.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Evelyn Kahl".

Evelyn Kahl  
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CALIFORNIA COMMUNITY CHOICE  
ASSOCIATION

September 27, 2022