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ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of:	)	
	)	
Proposed Adoption of Regulations Establishing a Greenhouse Gases Emission Performance Standard For Baseload Generation of Local Publicly Owned Electric Utilities.	))))	Docket 06-OIR-1

COMMENTS OF THE CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION TO THE PROPOSED 15-DAY CHANGES TO REGULATIONS ESTABLISHING AND IMPLEMENTING A GREENHOUSE GASES EMISSION PERFORMANCE STANDARD FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES

May 21, 2007

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1 Introduction

The California Municipal Utilities Association ("CMUA") hereby files these written Comments in response to the express terms of *Proposed 15-Day Changes to Regulations Establishing and Implementing a Greenhouse Gases Emission Performance Standard for Local Publicly Owned Electric Utilities* ("15 Day Language") submitted by the California Energy Commission ("CEC" or "Commission") in Docket No. 06-OIR-1 on May 4, 2007.

CMUA acknowledges and appreciates the efforts of the Commission's Electricity Committee to review CMUA's comments ("NOPA Comments") filed in this Docket on April 24, 2007, and to incorporate revisions in response to many of CMUA's concerns.

CMUA files these Comments to identify and clarify certain issues in the 15 Day Language that are relevant to local publicly-owned electric utilities ("POUs").

2 Comments on the Express Terms of 15 Day Language

2.1 Section 2901(j): Definitions of a new ownership investment

CMUA reasonably interprets that Proposed Regulation § 2901(j)(4)(A) is *not* triggered by *any* expenditure that is *not* designed and intended to extend the life of one or more generating units by five years or more. CMUA reasonably interprets that Proposed Regulation § 2901(j)(4)(A) is *not* triggered by *any* expenditure for routine maintenance.

2.2 Section 2907: Request for Commission Evaluation of a Prospective Procurement

CMUA appreciates the Electricity Committee's incorporation of Proposed Regulation § 2907 in response to CMUA's NOPA Comments. In proposing this evaluation process, it was CMUA's understanding that a request for an investigation pursuant to Chapter 2, Article 4 of the Commission's regulations would result in a final Commission decision. In that regard, if the Commission determined that an action was a covered procurement, CMUA understood that a POU would not be required to make a compliance filing after entering into the covered procurement. However, pursuant to discussions with Commission staff, CMUA understands that staff believes that the § 2907 evaluation is a preliminary determination and that a compliance filing will be required within 10 days of entering the covered procurement.

CMUA seeks clarification from the Commission on this subject. If the process pursuant to Proposed Regulation § 2907 still requires a compliance filing in accordance with Proposed Regulation §§ 2908 and 2909, CMUA proposes that a maximum timeline be specified for the § 2907 investigation process. CMUA proposes that the investigation process in Proposed Regulation § 2907(b) shall be completed within 30 days of receiving the POU's completed filing.

This seems reasonable and consistent with the Proposed Regulations by implementing the same timeline as that required for a final Commission decision on a covered procurement pursuant to Proposed Regulation § 2910. Furthermore, this proposal is non-substantive since the existing Chapter 2, Article 4 investigation process specifies maximum timelines but places no limits on how quickly a decision may be completed.

CMUA proposes the following language as a non-substantive change to Proposed Regulation § 2907(b).

> §2907 Request for Commission Evaluation of a Prospective Procurement
>
> (b) A request for evaluation under this section shall be treated by the Commission as a request for investigation under Chapter 2, Article 4 of the Commission's regulations. <u>The Commission shall, within 30 days after receipt of a complete request, issue a decision on whether the prospective covered procurement described in the request complies with this Article.</u>

Finally, it is CMUA's understanding that if a POU's final covered procurement filed pursuant to Proposed Regulation § 2910 is substantially the same as the prospective procurement evaluated by the Commission pursuant to Proposed Regulation § 2907, the Commission's § 2910 review will comprise little more than a ministerial action to confirm this fact.

2.3 Section 2911: Compliance Investigation

CMUA reasonably expects that the Commission shall give deference to any decision reached during a § 2910 review. Accordingly, CMUA reasonably expects that any request for a § 2911 compliance investigation of a covered procurement that was already reviewed by the Commission under § 2910 shall be dismissed unless the requester has met a burden of proof establishing that certain key facts of the covered procurement are different than those originally reviewed by the Commission.

2.4 Section 2913: Case-by-Case Review for Pre-existing Multi-Party Commitments

CMUA appreciates the Electricity Committee's incorporation of Proposed Regulation § 2913 in response to CMUA's NOPA Comments. In proposing this section, CMUA understands that a POU may offer sufficient information in a petition such that the Commission may properly consider and exempt broad categories of investments that a POU may prospectively enter into. In other words, a POU may demonstrate by its petition, that broad categories of investments "are required under the terms of the contract or ownership agreement; and the contract or ownership agreement does not afford the [POU] applying for the exemption the opportunity to avoid making such covered procurements."

3 Conclusion

CMUA respectfully requests the Commission to consider CMUA's Comments and incorporate CMUA's proposed non-substantive alternative language identified above.

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Respectfully submitted,

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