

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

In the Matter of:)	Docket No. 03-IEP-01,
Informational Proceedings and)	02-REN-1038, 03-RPS-1078,
Preparation of the 2004)	and 04-DIST-GEN-1
Integrated Energy Policy Report)	
Update)	
(2004 Energy Report Update))	

Comments
Of
The California Municipal Utilities Association
On
Staff White Paper
On
Accelerated Renewable Development

The California Municipal Utilities Association opposes the recommendation in the staff white paper that publicly owned utilities be mandated to adopt the exact same resource strategies as investor owned utilities. Local control should not be abandoned in favor of centralized state government planning. While it may be a natural tendency for regulators to want to regulate, publicly owned utilities are appropriately regulated by the citizens that own them. The Energy Commission should be supporting the difference which publicly owned utilities bring to the California market. Publicly owned utilities are adequately resourced. Investor owned utilities are not. Publicly owned utilities are building new conventional and substantial renewable facilities to meet their load and their load growth including adequate reserves. So far, investor owned utilities are not building anything. Publicly owned utilities are responsive to the needs and desires of their customer/owner/ratepayers. Investor owned utilities are responsive to stockholders. One size does not fit all, and if publicly owned utilities are forced into adopting all of the same policies that the for profit utilities follow, then the state will not benefit from even “yardstick” competition and there will no longer be any way to judge the performance of the for profit utilities.

Publicly owned, not for profit utilities, and investor owned, for profit utilities, are as different as apples and oranges. Both provide electricity to retail customers, but there the similarity ends. The primary difference is that investor owned utilities seek to maximize profits for their investors while publicly owned utilities seek to maximize benefits for their consumer/owners. Because of that difference, not for profit utilities and for profit utilities require completely different forms of oversight and regulation.

The California Constitution, Article 11, Section 9 recognizes the fundamental difference between public agencies and private companies when it provides: "*(a) A municipal corporation may establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communication. It may furnish those services outside its boundaries, except within another municipal corporation which furnishes the same service and does not consent.*" It goes on to say "*(b) Persons or corporations may establish and operate works for supplying those services upon conditions and under regulations that the city may prescribe under its organic law.*" The Constitution clearly recognizes the right of municipalities to provide electric service and to approve franchises where they choose not to provide the service themselves.

For much of the last 100+ years, the only competition to for profit utilities was from publicly owned utilities. Franklin Roosevelt speaking about the need for "yardstick" competition once said, "I therefore lay down the following principle: that where a community, a city, or county, or district is not satisfied with the service rendered or the rates charged by the private utility, it has the undeniable right as one of its functions of government...to set up...its own governmentally owned and operated service...the very fact that a community can, by vote of the electorate, create a yardstick of its own will, in most cases, guarantee good service and low rates to its population. I might call the right of the people to own and operate their own utility a birch rod in the cupboard, to be taken out and used only when the child gets beyond the point where more scolding does any good."

State "public service" or "public utilities commissions" were developed as a reaction to monopolistic practices of for profit utilities. From 1928 to 1935 the Federal Trade Commission conducted an extensive investigation which revealed widespread abuse by large private power holding companies. Many of the subsidiaries of the holding companies were effectively unregulated. By 1932, eight holding companies served 73% of the nation's investor owned electric load. In 1935 Congress passed the Public Utility Holding Company Act (PUHCA), which unfortunately is now under consideration by Congress for repeal. During that time period, most for profit utilities would not extend service to sparsely populated areas they considered unprofitable. State regulation was needed because of the abuses of for profit companies, not because of any need to regulate public agencies that are already accountable to voters.

Local elected officials who are elected by the owner/customer/ratepayers of the publicly

owned utility are concerned only with the public interest. Publicly owned utility customers exercise their own regulatory control every time they cast votes for the elected representative that regulate the local utility. They also have the opportunity to express their opinion about resource additions through community workshops, direct participation in city council and board hearings, advisory elections and the referendum process. All public agency decisions are subject to the Brown Act and the Public Records Act. Decisions of the IOUs are not.

Public policy on renewable portfolio standards exists because of the fear that the profit motive will result in investments in powerplants that do not take public concerns into account. The California Legislature, however, has repeatedly recognized the value of local decision making. The IOUs were encouraged by their regulator to divest powerplants after the passage of AB 1890, California's disastrous electric industry restructuring legislation. As a result the investor owned utilities under scheduled their loads during the critical summer peak period by 1/3 and that power had to be replaced on the spot market at a cost to the California Economy of an extra \$40 billion over two years. Publicly owned utility regulators chose to retain their generation assets and to forward contract to insure adequate reserves. The state regulated utilities did not. The result was rolling blackouts throughout the state, in which publicly owned utilities had to participate even though they had paid for sufficient resources. The Legislature decision to trust local resource decisions proved wise.

The staff report says "the three major differences between the RPS as it applies to IOUs relative to publicly owned utilities are the ability of publicly owned utilities to determine their own percentage of renewables, timeframe for reaching that percentage and fuel resources that qualify." The real difference is that the Legislature recognized the advisability of leaving resource decisions to the citizen/owner/customers of publicly owned utilities. Just as it was unwise to mandate resource decisions to local agencies in AB 1890, it is also unwise to take the responsibility for how to meet local load away from local elected officials.

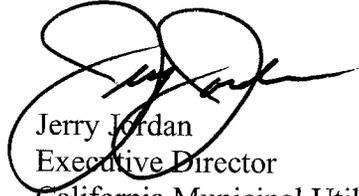
Local elected officials take the requirements of SB 1078 very seriously. Section 387 of the PUC Code states: "Each governing body of a local publicly owned electric utility, as defined in Section 9604, shall be responsible for implementing and enforcing a renewables portfolio standard that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement." Only the local elected official can make the decision of how much and which kind of renewables fits the needs of the local community.

For profit utilities need not invest in any renewables if (a) new resources are not needed or (b) the investment would exceed the amount of "public benefits" money already earmarked for renewable technologies. The Legislature was careful in SB 1078 to insure that renewables would not come at the expense of increased rates for the IOUs. Local

elected officials should not be forced into rate increases to meet any portfolio mandate, whether it is mandate to divest power plants or to invest in specific renewables.

Dated: August 18, 2004

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Jerry Jordan", written over a circular stamp or seal.

Jerry Jordan
Executive Director
California Municipal Utilities Association
915 L Street, Suite 1460
Sacramento, CA 95814

Differences Between Publicly Owned and Investor Owned Utilities

	Investor Owned Utilities	Publicly Owned Utilities
Structure	For Profit Corporations	Not for profit public agencies
Goal	Motivated to maximize profits	Motivated to maximize benefits to consumers
Management	Managed by Boards of Directors with a fiduciary responsibility to investors	Managed by public employees with a fiduciary responsibility to the local citizens
Regulation	Regulated by appointed state regulators	Regulated by locally elected officials
Transparency	Not open to public scrutiny Non transparent transactions	Subject to the Brown Act and the Public Records Act
Resource Decisions	No public input. Customers have no decision on types of resources in which the IOUs invest	Community input through <ol style="list-style-type: none"> a. Community workshops and forums b. Local elected officials c. Advisory votes d. Referendum e. Participation in city council and district board hearings f. Local elected officials

Resource Adequacy	IOUs do not have sufficient resources. During the energy crisis the under scheduled their loads by more than 30% and relied on the ISO to make up the difference in the spot market	MUNIs built or procured sufficient reserves and ran plants during the crisis to support the IOUs who under scheduled
Rate Setting	State appointed regulators	Locally elected officials
Rates	Nationally, IOU rates are 13% higher than public power rates	In California the differential is greater
Obligation to serve	IOUs at the urging of their state regulators abandoned the obligation to serve in favor of “the market will provide” and did not plan, build or procure sufficient resources	MUNIs retained the obligation to serve meaning the obligation to plan, build and procure sufficient resources and reserves
Renewables	The IOUs are procuring renewables that have already been built by others	MUNIs are building significant amounts of their own new renewables
Load Center Generation	IOUs are not building any new significant generation	MUNIs are building significant amounts of generation close to their loads, thus minimizing the need for new transmission
Transmission	IOUs have not built significant transmission in many years	MUNIs have built several major transmission lines including the COTP
Service Interruptions	IOU customers complain to the PUC	Publicly owned utility customers call their local elected officials. Elected officials are very responsive to voters
Local impacts	IOU revenues go to investors throughout the world	Public Power revenues stay at home
Size	California’s IOUs are very large	Most MUNIs are small in comparison and very responsive to local needs