

Memorandum

To: Docket 21-OIR-03

Date: **October 12, 2022**

From: **Michael Sokol, Deputy Director**
Energy Efficiency Division
California Energy Commission

Subject: Basis for Finding the Load Management Standards Rulemaking is Exempt under the California Environmental Quality Act

I. CEQA

The California Environmental Quality Act (CEQA) (Public Resources Code (PRC) section 21000 et seq.; see also CEQA Guidelines, California Code Regulations (CCR), Title 14, section 15000 et seq.) requires state agencies consider the environmental impact of their discretionary decisions. CEQA allows for certain projects to be exempted from its requirements. Of relevance here, and discussed further below, are the Class 7 and 8 exemptions (CCR, Title 14, section 15307 and 15308) and the commonsense exemption (CCR, Title 14, section 15061(b)(3)).

II. The CEC's Load Management Standards Program

The Warren-Alquist Act established the California Energy Commission (CEC) as California's primary energy policy and planning agency. Most, if not all, actions taken by the CEC are taken to protect the environment and natural resources, either in the near term with, for example, specific regulatory actions or the long term with, for example, long-term planning and investments in research. The Legislature over the years has made specific findings concluding CEC's work in regulating the energy sector is imperative for environmental protection. Notably, the Legislature has found the following: "it is the responsibility of state government to ensure that a reliable supply of electrical energy is maintained at a level consistent with the need for such energy for protection of public health and safety, for promotion of general welfare, and for environmental quality protection" (PRC, section 25001); "the present rapid rate of growth in demand for electric energy is in part due to wasteful, uneconomic, inefficient, and unnecessary uses of power and a continuation of this trend will result in serious depletion or irreversible commitment of energy, land and water resources, and potential threats to the state's environmental quality (PRC, section 25002); and "[i]t is further the policy of the state and the intent of the Legislature to employ a range of measures to reduce wasteful, uneconomical, and unnecessary uses of energy, thereby reducing the rate of growth of energy consumption, prudently conserve energy resources, and assure statewide environmental, public safety, and land use goals." (PRC, section 25007).

With regard to this specific project, Load Management Standards, section 25403.5 of the PRC authorizes and mandates the CEC to “adopt standards by regulation for a program of electrical load management for each utility service area” to, among other things, “encourage the use of electrical energy at off-peak hours or to encourage control of daily electrical load.” These standards are distinct from standards adopted pursuant to the CEC’s authority in section 25402 to set energy efficiency and flexible demand standards for buildings and appliances.

In 1979, the CEC adopted some of the first demand flexibility programs in the country through its Load Management Standards authority. The standards required peak load control programs for residential air conditioners, water heaters, and pool pumps, and required the five largest utilities (PG&E, SCE, SDG&E, LADWP, and SMUD) to offer rates based on marginal cost pricing. (CCR, Title 20, sections 1621-1625.) CEC amended these initial standards in 1982 and is proposing additional amendments.

The burning of fossil fuels in electricity generation, buildings, transportation, industrial, and agricultural sectors drives changes in the Earth’s climate by releasing greenhouse gases (GHG), such as carbon dioxide and methane. The state of California has set a goal to be 100 percent carbon free by 2045 (Senate Bill 100 (De León, Chapter 312, Statutes of 2018)) in hopes of mitigating the impacts of climate change. To reach this goal, the state will need to utilize clean energy resources rather than fossil-fuel generation. Fossil fuel generation, in addition to generating carbon, also damages the environment and natural resources by emitting air pollutants, such as carbon dioxide, nitrogen oxides, particulates, methane, and can require substantial amounts of water for extraction and cooling purposes. Existing demand resources, largely met by utility incentive programs, are not of sufficient size, cost-effectiveness, or flexibility to effectively support an electric grid comprised of carbon-free resources, such as solar and wind, which are inherently intermittent and inflexible. The main objective of the proposed Load Management Rulemaking is to develop options to address the challenges of GHG reductions and grid resiliency through amendments to California’s existing load management regulations (CCR, Title 20, sections 1621-1625).

Actions taken under these programs are designed to benefit the environment and natural resources by reducing energy demand in the state, thereby reducing the need to procure and generate electricity.

III. The Proposed Action

The goal of this action is to form the foundation for a statewide system that automates the uploading and sending of hourly and sub-hourly cost, GHG, and electric grid resiliency signals that can be used by end-use automation to provide real-time demand flexibility on the grid. This includes developing a consistent rate structure for the design of load management tariffs, enabling opportunities for storage of excess renewable generation, encouraging the use of technologies for automating utility-customer end-use load management, and evaluating other measures that improve the cost-effectiveness of the grid related to the timing and location of electricity demand. This demand flexibility ensures that more carbon-free resources are used to generate electricity for the grid, further reducing the use of fossil-fuel-based and other polluting resources. These updates will then help the CEC to develop flexible demand appliance standards that make use of the proposed demand automation system, building on this work to encourage and ensure more utilization of carbon-free resources.

With communications and automated control technologies, customers can allow their appliances to shift electric usage to take advantage of cleaner and cheaper supplies without sacrificing comfort or quality of service. Buildings and water can be precooled or preheated. Batteries and electric vehicles can be charged sooner or later than otherwise scheduled. Consumers can set dishwashing, laundry, and many other services to be automatically scheduled based on the electricity cost or GHG content. Advanced meters, communications, and automation technologies make this possible today.

Through the proposed amendments, California will begin to develop a statewide system that automates the publication of time and location dependent signals that can be used by mass-market end-use automation to provide real-time load flexibility on the electric grid. Universally available load management can reduce GHG emissions, save customers money, support grid resiliency, and reduce the likelihood of widespread outages during system emergencies, by shifting flexible consumption.

A key strategy for decarbonizing the electric grid is the replacement of fossil fuel electricity generation with carbon-free resources, such as solar and wind. Electric supply from these resources tends to be intermittent and inflexible, following the natural course of daily rhythms. Electric demand also varies by time of day, in a pattern that – for now – is not in sync with wind and solar supply. Today, deviations in daily electricity supply and demand patterns are largely met by generation from conventional fossil fuel power plants. As carbon-free resources replace conventional fossil fuel powered plants, the electric grid will place increasing value on resources that can balance supply and demand.

The CEC is investigating opportunities to optimize demand patterns using its existing Load Management Standards authority by addressing electricity rate structures, energy storage, and load automation. The standards proposed in this document will support cost-effective grid reliability through measures designed to synchronize daily electric demand with carbon-free supplies. In the absence of this synchronization, excess renewable supplies are “curtailed” by reducing available solar generation or paying other markets to absorb the surplus. In the first half of 2020, the California Independent System Operator curtailed up to 320 GWh per month – enough to power more than half a million California homes, and eight times the peak monthly curtailment of 2015. Without action to increase demand flexibility, or otherwise make use of this excess generation capacity, the magnitude of this wasted resource will continue to increase.

The transition to a carbon-free grid in California provides an opportunity for energy agencies to leverage advanced technologies to enhance the “flexibility” of demand resources – where flexibility denotes the ability to not only reduce loads at critical times, but also increase loads when excess renewable energy is available, and curtailment is imminent. Policies and regulations that increase the availability of flexible demand resources will support an affordable and reliable grid as the share of carbon-free resources expands. Increasing grid reliability also ensures protection of natural resources and the environment; when outages occur, electricity consumers turn to dirtier means of producing electricity to fill the gap in supply, such as small diesel-fueled generators that are even more polluting than utility-scale fossil fueled power plants.

None of the proposed changes to the Load Management Standards would cause a direct or reasonably foreseeable indirect physical change in the environment.

IV. Class 7 and 8 Exemptions

CCR, Title 14, sections 15307 and 15308, exempt actions taken by a regulatory agency to “assure the maintenance, restoration, or enhancement of a natural resource” and actions taken to “assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.” The proposed Load Management Standards will have no significant effect on the environment and fall squarely within the categorical exemptions of sections 15307 and 15308. This project’s activities are being undertaken in furtherance of the CEC’s Load Management Standards program to ensure that energy demand is sufficiently flexible to maximize the amount of load that is met with carbon-free resources. The proposed amendments provide California with the suitable economic incentives and necessary information infrastructure for load management automation. These tools will enable California to better manage the electricity demand and better align it with intermittent renewable resources. Consequently, they reduce the need for fossil-fuel generation by an estimated 1,700 GWh (at least) over 15 years and reduce 374 metric tons of GHG emissions, which will minimize the impact of the electricity system on the environment and the climate crisis, which in turn impacts natural resources including California’s water supply and forests. These actions are taken to assure the maintenance, restoration, or enhancement of one or more natural resources and to assure the maintenance, restoration, enhancement, or protection of the environment. Further, none of the exceptions to exemptions listed in CEQA Guidelines section 15300.2 apply to this project. Additionally, no unusual circumstances have been identified that could lead to the reasonable possibility that the activity will have a significant effect on the environment. For these reasons, this project is exempt from CEQA.

V. Common Sense Exemption

The development and adoption of these amendments to the CEC’s Load Management Standards are also exempt from CEQA under the commonsense exemption. CEQA only applies to projects that have the potential for causing a significant effect on the environment. (CCR, Title 14, section 15061(b)(3).) A significant effect on the environment is defined as “a substantial, or a potentially substantial, adverse change in the environment,” and does not include an economic change by itself. (PRC, section 21068; CCR, Title 14, section 15382.) The goal of the proposed amendments to the Load Management Standards is to form the foundation for a statewide system that automates the publication of time and location dependent signals that can be used by building owners/operators and mass-market end-use automation to provide real-time load flexibility on the electric grid. The combination of statewide signals and robust responsive automation markets proposed in this action will enable customer-supported load management on a mass-market scale to provide signals and tools to further support the reliability of the grid and reduce reliance on fossil-fuel generated electricity. No significant adverse impacts to the environment have been identified as resulting from this action. For these reasons, adoption of the amendments to the CEC’s regulations is not subject to CEQA under the commonsense exemption of section 15061(b)(3).

VI. Conclusion

As shown above, the proposed amendment to the Load Management Standards is a regulatory action that would protect natural resources and the environment and is, therefore, categorically exempt from further CEQA review under sections 15307 and 15308 of the CEQA Guidelines. Additionally, it can be seen with certainty that there is no possibility that the activity

in question may have a significant effect on the environment and, therefore, this project is exempt pursuant to the commonsense exemption under section 15061(b)(3) of the CEQA Guidelines.

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

**ADOPTION OF PROPOSED AMENDMENTS TO LOAD MANAGEMENT
STANDARDS**

WHEREAS, on December 22, 2021, the State Energy Resources Conservation and Development Commission ("CEC") mailed and posted on the CEC's website a Notice of Proposed Action (NOPA) formally notifying the public of the CEC's intent to adopt amendments to the Load Management Standards regulations, the Express Terms of the proposed amendments (Express Terms), an Initial Statement of Reasons (ISOR) describing the rationale for the proposal, a Market Informed Demand Automation Server (MIDAS) document relied on, an Economic and Fiscal Impact Statement, a Std. Form 399, and a Final Staff Report; and

WHEREAS, on December 24, 2021, the NOPA was published in the California Regulatory Notice Register and delivered to the Secretary of the California Natural Resources Agency. The NOPA stated that a Public Hearing to hear comments on the proposed amendments would be held on February 8, 2022, and that the CEC would consider and possibly adopt the proposed amendments at a May 11, 2022, Business Meeting of the CEC; and

WHEREAS, on February 7, 2022, the 45-day written comment period established by the NOPA closed; and

WHEREAS, on February 8, 2022, the Lead Commissioner for the rulemaking held a Public Hearing, as noticed in the NOPA, to receive oral comments on the proposed amendments; and

WHEREAS, on April 5, 2022, the CEC published a Notice of 15-Day Comment Period proposing changes to the Express Terms based on comments received during the 45-day comment period and the February 8, 2022, Public Hearing; and

WHEREAS, on April 20, 2022, the 15-day written comment period established by the Notice of 15-Day Comment Period closed; and

WHEREAS, on May 6, 2022, CEC staff posted a Notice of Postponement of Adoption Hearing, informing interested parties and the public that the proposed amendments to the Load Management Standards would be considered for adoption at a time later than the originally posted date of May 11, 2022; and

WHEREAS, on July 6, 2022, the CEC published a Second Notice of 15-Day Comment Period proposing additional changes to the Express Terms based on comments

received during the first 15-day comment period. The Second Notice of 15-Day Comment Period also noticed CEC would consider and possibly adopt the proposed amendments at the August 10, 2022, Business Meeting of the CEC; and

WHEREAS, on July 21, 2022, the comment period established by the Second Notice of 15-day Comment Period closed; and

WHEREAS, on July 29, 2022, CEC staff posted a Notice of Postponement of Adoption Hearing, informing interested parties and the public that the proposed amendments to the Load Management Standards would be considered for adoption at a time later than the posted date of August 10, 2022; and

WHEREAS, on September 12, 2022, the CEC published a Third Notice of 15-Day Comment Period proposing additional changes to the Express Terms based on comments received prior to the date of the September 12, 2022, notice. The Third Notice of 15-Day Comment Period also noticed CEC would consider and possibly adopt the proposed amendments at the October 12, 2022, Business Meeting of the CEC; and

WHEREAS, each of the above-referenced documents and notices was provided to every person on the CEC's Load Management, Decarbonization, and Rulemaking email subscription lists, and to every person who had requested notice of such matters; and

WHEREAS, on September 27, 2022, the comment period established by the Third Notice of 15-day Comment Period closed; and

WHEREAS, on October 12, 2022, the CEC considered adopting the proposed amendments at its Business Meeting and adopted the amendments as proposed in the Third Notice of 15-Day Comment Period.

THEREFORE, THE CALIFORNIA ENERGY COMMISSION FINDS:

With regard to the California Environmental Quality Act (CEQA):

- The CEC has considered the application of CEQA to the proposed amendments and concluded that the proposed amendments are exempt from CEQA under Class 7 (Cal. Code Regs., tit. 14, § 15307) and Class 8 (Cal. Code Regs., tit. 14, § 15308) because they constitute a regulatory action that would protect natural resources and the environment, and the commonsense exemption (Cal. Code Regs., tit. 14, § 15061 subd. (b)(3)) because there is no reasonable possibility that the proposed amendments would have a significant effect on the environment, even due to unusual circumstances; and

With regard to the Warren-Alquist Act:

- The proposed amendments will result in adjustments to rate structures in the affected utility service areas to encourage and facilitate the use of electrical energy at off-peak hours, alignment of daily electrical use with available energy supply, and use of renewable energy; and

- The proposed amendments are cost-effective when compared with the costs for new electrical capacity, and storage; and
- The proposed amendments are technologically feasible and attainable; and
- The proposed amendments will result in benefits on a statewide level, such as reductions in air pollution, greenhouse gas emissions, and energy use and demand, and increased electrical system reliability; and

With regard to the Administrative Procedure Act:

- The proposed amendments will not result in the creation of new businesses or elimination of existing businesses, will not result in the expansion of businesses currently doing business in California, and will not result in a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states; and
- The proposed amendments will not result in the creation or elimination of a significant number of jobs within California; and
- The proposed amendments will impose no direct costs, or direct or indirect requirements or mandates, on state agencies, local agencies, or school districts, including but not limited to costs that are required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code; and
- The proposed amendments will result in no costs or savings in federal funding to the State of California; and
- The proposed amendments will result in marginal costs to the CEC for implementation, but no costs or savings to any other state agency; and
- The proposed amendments will result in no nondiscretionary costs or savings to local agencies or school districts; and
- The proposed amendments will have no impact on housing costs; and
- The proposed amendments will not have a significant adverse effect on businesses in general or small businesses in particular and no alternatives were proposed that would lessen any adverse economic impact on businesses or small businesses; and
- The proposed amendments will not adversely affect the health and welfare of California residents, worker safety, or the state's environment; and
- The proposed amendments will result in benefits on a statewide level, such as reductions in air pollution, greenhouse gas emissions, and electricity use and demand, and increased electrical system reliability; and

- The proposed amendments have no alternatives that would be more effective in carrying out the purposes of the statutes for which they are proposed, that would be as effective and less burdensome to affected private persons in carrying out those purposes, or that would be more cost-effective to affected private persons and equally effective in implementing those purposes; and
- The proposed amendments require new reports regarding compliance with the regulations' requirements. This information is necessary for consumers and the CEC to confirm the standards are met and energy, environmental, and cost benefits will actually be achieved. Accordingly, it is necessary that these reporting requirements apply to businesses in order to protect the health, safety, and welfare of the people of California, as required by Government Code section 11346.3, subdivision (d). It is also necessary for the CEC and the public have an understanding of load management efforts as the state endeavors to achieve its aggressive decarbonization goals; and
- None of the comments received during the comment periods or at the adoption hearing, and nothing else in the record, justified any changes to the proposed amendments as published in the Third Notice of 15-Day Comment Period.

THEREFORE, BE IT RESOLVED, that, based on the entire record before it, the CEC finds that the proposed regulations are exempt from CEQA under Class 7 (Cal. Code Regs., tit. 14, § 15307) and Class 8 (Cal. Code Regs., tit. 14, § 15308) because they constitute a regulatory action that would protect natural resources and the environment, and the commonsense exemption (Cal. Code Regs., tit. 14, § 15061 subd. (b)(3)) because there is no reasonable possibility that the proposed amendments will have a significant effect on the environment; and

FURTHER BE IT RESOLVED, after considering all comments received and staff's responses, and based on the entire record of this proceeding, the CEC hereby adopts the amendments to its Load Management Standards regulations, as set forth in the express terms that were published in the Third Notice of 15-Day Comment Period (Cal. Code of Regs., tit. 20, §§ 1621 and 1623). The CEC takes this action under the authority of, and to implement, interpret, and make specific sections 25132, 25213, 25218(e), and 254023.5 of the Public Resources Code; and

FURTHER BE IT RESOLVED, that documents and other material that constitute the rulemaking record can be found at the California Natural Resources Agency Building, 715 P Street, Sacramento, California, 94814, in the custody of the Docket Unit and online at [Load Management Rulemaking \(ca.gov\)](https://www.ca.gov/load-management-rulemaking); and

FURTHER BE IT RESOLVED, the CEC delegates the authority and directs CEC staff to take, on behalf of the CEC, all actions reasonably necessary to put the adopted regulations into effect, including but not limited to making any appropriate non-substantive or non-substantial changes to the regulations; preparing all appropriate documents, such as the Final Statement of Reasons; compiling and submitting the rulemaking file to the Office of Administrative Law (OAL); making any changes to the

rulemaking file required by OAL; and preparing and filing the Notice of Exemption with the State Clearinghouse.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on October 12, 2022.

AYE:

NAY:

ABSENT:

ABSTAIN:

Dated:

Liza Lopez
Secretariat