

**STATE OF CALIFORNIA  
BEFORE THE CALIFORNIA ENERGY COMMISSION**

**In the matters of:**

Amendments to the Regulations  
Specifying Enforcement Procedures for  
the Renewable Portfolio Standard for  
Local Publicly Owned Utilities

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Docket No. 14-RPS-01

SMUD Comments On: *Proposed  
Amendments to POU RPS  
Regulations: 15-Day Language*

July 21, 2015

**Comments of the Sacramento Municipal Utility District on the  
*Proposed Amendments to the Enforcement Procedures for the  
Renewable Portfolio Standard for Local Publicly Owned Utilities:  
15-Day Language***

Thank you for the opportunity to provide comments on the topic of 15-Day Language amendments to the regulations for the Enforcement of the Renewable Portfolio Standard (RPS) on Local Publicly Owned Utilities (POUs) (15-Day Language). The Sacramento Municipal Utility District (SMUD) supports the 15 Day Language changes that clarify the definition of “bundled” and that clarify the treatment of amendments to short-term contracts. SMUD requests one additional clarification prior to the adoption of the 15-Day Language, as discussed below.

SMUD commented on the added clarification in the 45-day language (see SMUD’s May 11 filed comments) for the treatment of contract amendments for resources subject to Section 3202(a)(3) – resources procured prior to 6/1/2010 but which were not eligible under the RPS at the time of procurement. While there is not very much generation from these resources, in SMUD’s experience, we agreed that it was important to clarify the issue. However, SMUD recommended that the added clarification language be altered for further clarity, and duplicated as modified and similarly included in Section 3202(a)(2) to provide this added clarity to the situation of amendments to grandfathered, “count in full” contracts.

The proposed text to be added in 3202(a)(3)(C) contains phrases that can cause confusion when considering the variety of contract amendments covered by the paragraph. In particular, the added phrases “...for the term of the contract executed

prior to June 1, 2010” and “...after the end of the original term...” seem to imply that it is mainly contract term amendments that are covered by the language. The language appears to suggest that amendments can be made to increase the capacity or amount of energy under a contract, or substitute a different source, but without changing the term of the contract, and these amendments would not require changing the product content categorization of the procurement (until the original term of the contract expires). For example, it appears that one could have a 20 year contract for 25 MW of renewable power, amend that in year 10 to increase the capacity to 50 MW, and incur no change in categorization until the end of the contract (the end of the original term). SMUD does not believe the CEC intends this result, so states again that the language as written appears to add confusion rather than clarity.

In addition, the original amendment language for grandfathered contracts in Section 3202(a)(2)(B), while unchanged from the existing regulations here, is also in need of clarification in SMUD’s view. This language states:

“3202(a)(2)(B) If contract amendments or modifications after June 1, 2010, increase nameplate capacity or expected quantities of annual generation, increase the term of the contract except as provided in 3202 (a)(2)(C), or substitute a different eligible renewable energy resource, only the MWhs or resources procured prior to June 1, 2010, shall count in full toward the RPS procurement targets. The remaining procurement must be classified into a portfolio content category and follow the portfolio balance requirements in accordance with section 3204 (c).”

Here, SMUD suggests that it is unclear what “... procured prior to June 1, 2010...” means, as well as “... remaining procurement...”, though these phrases are clearly related to each other. This language has three potentially valid interpretations:

- That the energy procured prior to June 1, 2010 is grandfathered, while the energy procured after that date is not;
- That the energy procured prior to the date of amendment (when the procurement terms were actually altered) is grandfathered, while the energy procured after that date is not; and
- That the energy procured under the terms in place prior to June 1, 2010 are grandfathered for the remainder of the contract, while the energy procured after the amended terms take effect is not.

SMUD again suggests that the third interpretation is the best, as it best represents the intent of the contracting parties, and requests that this interpretation be explicitly included in the language for Sections 3202(a)(2)(B) and 3202(a)(3)(C). With SMUD’s proposed amendments, these sections would now read:

“3202(a)(2)(B): If contract amendments or modifications after June 1, 2010, increase nameplate capacity or expected quantities of annual generation, increase the term of the contract except as provided in 3202 (a)(2)(C), or substitute a different eligible renewable energy resource, only the MWhs or resources procured under the terms of the original contract signed prior to June 1, 2010, shall count in full toward the RPS procurement targets, for as long as

those terms continue to apply under the amended contract. The remaining procurement must be classified into a portfolio content category and follow the portfolio balance requirements in accordance with section 3204 (c).”

“3202(a)(3)(C): If contract amendments or modifications after June 1, 2010, increase nameplate capacity or expected quantities of annual generation, increase the term of the contract, or substitute a different eligible renewable energy resource, only the MWhs or resources procured under the terms of the original contract signed prior to June 1, 2010, shall be considered to meet the criteria of this section 3202 (a)(3), for as long as those terms continue to apply under the amended contract. ~~for the term of the contract executed prior to June 1, 2010.~~ The remaining procurement, ~~or any electricity products procured after the end of the original contract term,~~ must be classified into a portfolio content category and follow the portfolio balance requirements in accordance with section 3204 (c).”

SMUD’s recommended language provides clarification to the treatment of contract amendments in both of these cases. This clarification is particularly important for Section 3202(a)(2)(B), since the grandfathered, “count in full” contracts covered by that section are much more numerous in the RPS than the procurement covered by Section 3202(a)(3). SMUD notes that POU’s must attempt to understand what procurement content category any contract falls under, in order to be assured of meeting the procurement content category requirements of the regulations. As time passes, more and more of the grandfathered, “count in full” contracts will likely be subject to amendments that subject that procurement to the PCC requirements, and it is critically important to have clarity about how these potential amendments will affect a POU’s RPS compliance in this regard.

Regulatory clarification of or other confirmation of SMUD’s interpretation here is necessary. SMUD has received e-mails from CEC staff in response to queries about specific potential amendments that appear to have differing interpretations about how procurement after an amendment will be categorized, making it difficult to really understand how potential future amendments affect SMUD’s RPS compliance.

Thank you again for the opportunity to comment.

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cc: Corporate Files (LEG 2015-0599)