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**Sacramento Municipal Utility District Comments on Revised AB 1110
Implementation Rulemaking**

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Rulemaking

Additional submitted attachment is included below.

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

In the matter of:)	Docket No. 16-OIR-05
)	
AB 1110 Implementation Rulemaking)	SMUD Comments on AB 1110
)	Informal Regulatory Language
)	
)	March 21, 2019
)	
)	

**COMMENTS OF SACRAMENTO MUNICIPAL UTILITY DISTRICT
ON REVISED ASSEMBLY BILL 1110 IMPLEMENTATION PROPOSAL
FOR POWER SOURCE DISCLOSURE, THIRD VERSION**

The Sacramento Municipal Utility District (“SMUD”) respectfully submits the following comments to the California Energy Commission (“CEC”) regarding the *Pre-Rulemaking Amendments to the Power Source Disclosure* (Draft Regulations).

SMUD appreciates the significant simplification in the Power Content Label (PCL) template accompanying the Draft Regulations, with only two footnotes rather than five in the previous Assembly Bill 1110 implementation proposal. However, SMUD recommends further changes as explained below.

SMUD continues to be concerned that the Draft Regulations, like the CEC staff’s earlier proposals, will result in a power content label that is confusing to consumers who value renewable energy investments. SMUD also reiterates our concern that the proposal does not represent the reality of electricity contracting, procurement, or delivery in California or throughout the West. The ability to use mechanisms such as RECs to track renewable energy procurement across systems and political boundaries in a regional grid is essential. Nothing in AB 1110 requires the treatment of unbundled RECs and firmed and shaped contracts reflected in the Draft Regulations. The Draft Regulations are unnecessarily inconsistent with the RPS program that is jointly managed by the CEC and CPUC, as well as with the existing structures underlying renewable PPAs and most electricity transactions across the West. The Draft Regulations are also inconsistent with CARB’s Cap and Trade program, including treatment of firmed and shaped resources.

SMUD continues to oppose many aspects of the Draft Regulations, including:

- The proposed treatment of unbundled Renewable Energy Credits (RECs) for purposes of calculating and presenting a product's "power mix" in the Power Content Label (PCL). The renewable generation underlying the unbundled REC should be included in the power mix, contrary to the proposed treatment.
- The proposed treatment of unbundled RECs for purposes of calculating and presenting a product's greenhouse gas (GHG) intensity in the Power Content Label (PCL). Again, the zero-GHG attribute of the renewable generation underlying the unbundled REC should be reflected in the consumer-facing PCL, contrary to the proposed treatment.
- The proposed treatment of "firmed and shaped" contracts involving the importing of "substitute power" associated with procurement of renewable generation outside of California. The underlying renewable procurement should be reflected in the consumer-facing GHG intensity in the PCL, consistent with the proposed reflection of that power in the power mix portion of the paper. Grandfathering of existing contracts as proposed is insufficient to resolve this error.

SMUD expands on these points and discusses other issues in the sections below.

A. Unbundled RECs Should Be Categorized in the PCL as Eligible Renewable Power and reflect the GHG Intensity of the Renewable Procurement.

AB 1110 provides the CEC with substantial discretion about how to incorporate unbundled RECs in the PCL. The law merely states that the CEC shall determine a format to include "... the portion of annual sales derived from unbundled renewable energy credits..."¹ in disclosures (such as the PCL). Unbundled RECs are a viable, accepted, eligible renewable energy product in California, in voluntary markets, and in every other renewable program or structure in the country and around the world -- representing real support for zero-emission renewable generation. SMUD refers the CEC to our previous comments on this issue.

SMUD still sees no good rationale for the CEC to adopt an interpretation of AB 1110 that essentially tells our customers that any unbundled RECs we procure for them cannot be claimed as renewable in the power mix we provide to them, when at the same time any unbundled RECs they voluntarily procure for themselves under CRS and FTC guidelines can be claimed as renewable procurement. This will make it difficult for utilities to continue participating in and fostering the voluntary green power market in California.

Take as an example some of SMUD's current institutional Greenergy customers. These large customers participate in Greenergy through a custom product mechanism, which in 2019 will include approximately 27% product content category 1 (PCC1) resources and 73% unbundled RECs – making up a 100% renewable product.

¹ See PUC 398.4(h)(7).

As SMUD has contended previously, a customer’s procurement of unbundled RECs should reflect the intent of that customer to procure renewable power. Under the Draft Regulations, the PCL associated with such a custom product would presumably look like the following (note that the example uses the CA Total Mix provided in the PCL template):

(ENTITY NAME & ELECTRICITY PORTFOLIO NAME)				
2019 POWER CONTENT LABEL				
Greenhouse Gas Emissions Intensity (in kg CO₂e/MWh)¹		Energy Resources	Fuel Mix	CA Total Mix
Custom State	CA Average	Eligible Renewables¹	27.0%	22.0%
313	305	Biomass & bio waste	0.0%	3.0%
		Geothermal	0.0%	4.0%
		Eligible small hydroelectric	0.0%	1.0%
		Solar	13.5%	6.0%
		Wind	13.5%	8.0%
		Coal	0.0%	6.0%
		Large Hydroelectric	0.0%	5.0%
		Natural Gas	0.0%	44.0%
		Nuclear	0.0%	9.0%
		Other	0.0%	0.0%
		Unspecified Power ²	73.0%	14.0%
TOTAL			100.0%	100.0%
Unbundled RECs retired as a percentage of this electric service product's retail sales:			73%	
¹ Unbundled renewable energy credits (RECs) represent renewable investments that do not deliver electricity to the retail supplier's customers. Unbundled RECs are not reflected in the power mix or GHG emissions. ² Unspecified power is electricity that was purchased through open market transactions and is not traceable to a specific generation source or sources.				
For specific information about this electricity portfolio, contact:		(Entity Name)	(Entity Phone Number)	(Entity Website)
For more information about the power content label, consult:		California Energy Commission	1-844-217-4925	www.energy.ca.gov/pcl/

Also, consider an individual that procures or receives a gift of unbundled RECs (as well as carbon offsets), with the express intent of making the individual’s energy use for a year claimable as renewable and GHG-free. If the individual desired to procure those RECs through a utility green pricing program, rather than directly from market vendors, the Draft Regulations would require the individual be sent a PCL that indicated 100% unspecified power, with GHG emissions significantly higher than the California Power Mix, which currently includes over 30% renewable power as well as 15-20% sourced from GHG-free and large hydro and nuclear power.

If the individual procured or was gifted with the RECs from market vendors outside of a utility program, however, they presumably would feel free to ignore the requirements in the Draft Regulations and claim 100% renewable, GHG-free power.

An individual or entity that voluntarily pays additional money, above their normal power cost, to participate in a voluntary green pricing program that uses 100% eligible renewable unbundled RECs is expecting that the added cost to them not only supports renewable energy (which it does) but also buys them the right to claim the attributes from that power, including the GHG-free attribute. It makes no sense to require that utility green pricing program to send and post a PCL that shows no clear renewable power procurement and a higher GHG signature than the average California Power Mix, as can be seen in the example template below (again, using the example California Power Mix).

(ENTITY NAME & ELECTRICITY PORTFOLIO NAME)					
2019 POWER CONTENT LABEL					
Greenhouse Gas Emissions Intensity (in kg CO₂e/MWh)¹		Energy Resources	Fuel Mix	CA Total Mix	
(Product Name)	CA Average	Eligible Renewables¹ Biomass & biowaste Geothermal Eligible small hydroelectric Solar Wind Coal Large Hydroelectric Natural Gas Nuclear Other Unspecified Power² TOTAL	0.0%	22.0%	
428	305			0.0%	3.0%
				0.0%	4.0%
				0.0%	1.0%
				0.0%	6.0%
				0.0%	8.0%
				0.0%	6.0%
				0.0%	5.0%
				0.0%	44.0%
				0.0%	9.0%
			0.0%	0.0%	
			100.0%	14.0%	
	100.0%	100.0%			
<i>Unbundled RECs retired as a percentage of this electric service product's retail sales:</i>			100%		
¹ Unbundled renewable energy credits (RECs) represent renewable investments that do not deliver electricity to the retail supplier's customers. Unbundled RECs are not reflected in the power mix or GHG emissions ² Unspecified power is electricity that was purchased through open market transactions and is not traceable to a specific generation source or sources.					
For specific information about this electricity portfolio, contact:		(Entity Name)	(Entity Phone Number) (Entity Website)		
For more information about the power content label, consult:		California Energy Commission	1-844-217-4925 www.energy.ca.gov/pcl/		

The Draft Regulations could also complicate and confuse with respect to consumer information about RPS compliance. SMUD agrees that an annual PCL should not attempt to match or reflect RPS compliance, which includes multiple year compliance periods and banking. Consumers may still get confused, however, particularly in a period where the RPS obligation is relatively stable and well-known. For example, after 2030, the RPS requirement remains constant at 60%. A utility that has stable load, optimizes their RPS obligation by procuring the maximum allowed PCC3 and PCC2 RECs, has the required PCC1 resources under long-term contract, and retires their RECs annually could consistently, year after year, achieve full RPS compliance and yet send PCLs to their customers that shows 54% eligible renewable procurement, and thereby seem to imply RPS noncompliance over time.

The Draft Regulations may produce illogical results in a 100% clean energy future. Consider a situation where all power procured by California consumers is GHG-free, but for which all RECs have been separated from the underlying energy and traded among entities as necessary. In this case, all Electricity Products sold would show the GHG intensity of unspecified power beyond any large hydro or nuclear resources, but in reality, there would be zero-GHG throughout the State.

Nevertheless, SMUD agrees that AB 1110 requires the CEC to identify unbundled RECs in some fashion in the PCL. SMUD has previously suggested that unbundled RECs be treated in the power mix under the fuel type of the underlying renewable energy (with commensurate GHG treatment), with an explanatory footnote. That is still SMUD's preferred position. However, should the CEC again reject SMUD's preferred position, the following changes should be incorporated in the PCL template:

- 1) The "footnote" associated with the included percentage of unbundled RECs (under the Power Mix total line) should read: Unbundled RECs from eligible renewable resources retired as a percentage of this electric service product's retail sales:
- 2) Footnote 1 should read: This product includes eligible renewable unbundled renewable energy credits (RECs), representing renewable investments where the that do not deliver electricity generated is not delivered to the retail supplier's customers. Unbundled RECs are not reflected in the power mix or GHG emissions intensity of that mix intensities above.
- 3) Entities should be able to include a "stacked bar" for their GHG intensity, with the highest bar showing the GHG intensity without bringing in the zero-GHG unbundled REC procurement, and the second, lower bar, reflecting the GHG intensity with that zero-GHG procurement taken into account.
- 4) The regulations should explicitly state that entities have the legal right to add to the unbundled REC information in the label, at their discretion.

B. Unbundled RECs Should Be Categorized in the PCL as Conveying Zero-GHG Emissions.

The Draft Regulations should be modified to provide information acknowledging that unbundled RECs represent zero-GHG procurement in the GHG intensity factor portion of the PCL. The zero-GHG attribute of the renewable generation underlying the unbundled REC should be reflected in the consumer-facing PCL, contrary to how the Draft Regulations suggest. SMUD prefers the simple structure that shows one GHG-intensity number and bar for an Electricity Product. At the very least, however, a “stacked bar” structure as proposed above should be included to reflect in the GHG intensity in the PCL the claim of responsibility for zero-GHG resources in one’s procurement.

SMUD reiterates from previous comments that the Draft Regulations appear to reflect an unfortunate simplification and/or misunderstanding of how RECs and the electricity system work. SMUD requests that the CEC again consider the following points:

- An unbundled REC still represents renewable generation supplied to the grid – you cannot have a REC without generation. Renewable generation supplied to the grid reduces GHG emissions – it displaces fossil power on the grid.
- In the case of unbundled RECs from behind the meter sources in California, the renewable generation is supplied to a California balancing authority, but the fossil generation that is displaced may be from in-state or out-of-state (e.g. – an import contract may be displaced). In the case of unbundled RECs from an out of state source, the generation *does actually happen* and is delivered to the grid where the generator is located, but the displaced fossil power may be in-state or out-of-state power (e.g. – an export from a California generator may be displaced).
- Neither the location of the underlying generator associated with the unbundled-REC, nor the bundling or unbundling of the REC itself, can be clearly associated with GHG reductions in one-place versus another.
- The question is: who gets to claim those GHG emission reductions *for product claims* as opposed to compliance – those that have procured the renewable attributes through the REC, or some unknown entity that simply “sees” the reductions from their powerplants or geographic location?
- The right way to answer this question for retail product claims is by asking *who caused* the reductions with their procurement – and the answer to that question is the procurer of the renewable generation, either bundled or unbundled.

Again, it does not make sense to treat a PCC1 procurement where the RECs are stripped and kept but power sold as unspecified any differently than where unbundled RECs are simply procured. The retail supplier must in both cases serve its load with delivered power that does not come from the renewable generator, but the Draft Regulations require exactly the opposite treatment in the PCL, allowing modifying and adjusting the GHG emissions in one case but disallowing that in the other. The concept that there is some difference between the unbundled REC case and the “bundled but not delivered” case in terms of actual GHG emissions to customers is simply wrong.

The correct way to think of this question is by associating the retail product claim to GHG reductions with the REC purchase in *all* cases. The GHG intensity calculated for the PCL should reflect the claim of responsibility for GHG emissions from one's procurement. If a retail supplier procures renewable generation and tracks that procurement by their holding (and at some point, retiring) RECs – bundled or unbundled, it has the right to claim the zero-GHG signature of the underlying renewables.

SMUD still maintains that the CEC should strive to make the power mix and GHG intensity information in the consumer-facing PCL as consistent as possible with the renewable eligibility requirements of the consumer-facing, procurement-oriented RPS. That a REC can be separated from the underlying generation is nothing new and should not devalue the zero-emission nature of the underlying renewable generation. Without the critical component of conveying renewable, and particularly zero-emission attributes, unbundled RECs would have no market purpose or value. It will clearly cause confusion and not be simple to understand if consumers signing up voluntarily for renewable power are presented with information about their power having significant GHG emissions.

C. Firmed and Shaped Contracts Should be Reflected Consistently -- as Renewable in the Power Mix Portion of the PCL and with Commensurate (mostly zero) GHG emissions in the Emission Intensity Portion.

SMUD still strongly disagrees with the Draft Regulations regarding the treatment of new firmed and shaped contracts for the GHG emissions calculation. The CEC should strive for consistency between the two parts of the PCL to avoid consumer confusion and market disruption. Firmed and shaped contracts are eligible for RPS compliance, and when this procurement is included as eligible renewables on the power mix portion of the PCL the CEC should also show the zero-GHG nature of the procurement in the GHG intensity portion. Requiring such a discrepancy in the PCL may disrupt the market for firmed and shaped contracts and increase costs of compliance in the RPS program at a time when renewable procurement is set to accelerate again.

The proposed treatment here is inconsistent with ARB's Cap & Trade program, which allows an "RPS Adjustment" to reduce a procuring entity's Cap & Trade compliance obligation for firmed and shaped contracts (under certain conditions). The ARB is essentially saying that for this type of procurement the procuring entity's GHG responsibility for compliance is linked to the originating renewable power and not the firming fossil power. This is an instance where it is "practicable" to be consistent with the Cap & Trade program rather than the MRR program at CARB. Assembly Member Ting's letter to the journal indicates the author's intent for practicable consistency with ARB's Cap & Trade program as well as MRR, and explicitly acknowledges that the Cap & Trade program allows "... specific adjustment to compliance obligations", which includes the RPS Adjustment.

The author's stated intent, and recognition of adjustments allowed within these programs, lends itself to application of a similar adjustment to the GHG intensity calculation for firmed and shaped contracts, as provided under the Cap & Trade program with the RPS adjustment.

D. Other Issues

Clarification of Treatment of Multifuel Resources: The CEC should clarify the treatment of multiple-fuel resources in the power mix, as described in Section 1393(b)(4). This section states: "Multifuel generators ... shall be classified according to the dominant fuel type used for electricity generation ...". This treatment is inconsistent with the RPS, which considers biomethane burned in local power plants as a PCC1 resource. It is also inconsistent with the Cap and Trade program, which provides that the emissions from burning biomethane (meeting certain conditions) do not come with a Cap and Trade obligation. In most cases, the biomethane burned in a power plant will not be the dominant fuel type. The Draft Regulations should be modified to state that the fuel types of a multi-fuel resource should all be reflected under the appropriate fuel categories, except perhaps in de Minimus situations.

Clarification of Need to Provide a PCL for a Custom Product: Section 1394(e) states that custom products, as defined, "shall not" be included in the PCL. The section goes on to state that custom products shall be disclosed to the subscribed customers on a separate Power Content Label. First, there is no reason to ban the custom product information entirely from the PCL (see below for an instance where SMUD may include custom product information in the PCL). The wording should be changed to "need not" or something similar. Second, since custom products are by nature negotiated with the customer or customers being served, they know very well the characteristics of the product. Their negotiated power content, including information about fuel makeup, GHG intensities, location, etc. is included in the written material defining the agreement to procure the custom product. It makes sense that custom products do not need to follow the promotional disclosure or website disclosure requirements in the Draft Regulations, and this exemption for these products should be extended to the format and structure of the PCL itself, as long as the information about fuel type, location, and GHG intensity has been disclosed in the written procurement agreement.

Footnote 5: Section 1394(c)(5) contains a reference to "footnote 5" in relation to the display of unbundled RECs information. This appears to be a holdover from the Third Proposal, in which the PCL included five rather than two footnotes. If still needed, the wording should be modified to refer to the unnumbered "footnote" now found in the proposed PCL template, if that is retained in the formal regulations

SolarShares Products: SMUD expects to have a variety of SolarShares products available to our customers, including programs focused on existing residential customers; existing commercial, industrial and institutional customers, new home developments; and custom products.

Since all these products share the same fuel type and percentage (100% of the product power is from solar) and resource location structure, etc., SMUD believes that it is less cumbersome and confusing to include these products together in one column on the PCL, under the general title “SolarShares”. The Draft Regulations should explicitly allow for identically sourced products with differing names or sets of customers to be disclosed in one column on the PCL.

Regulation Effective Date: New reporting using the eventually adopted final regulations should reflect the timing of procurement decisions and regulation adoption. Decisions are already being made today on procurement for 2019 products, without any final certainty about the eventual provisions of the adopted regulations. PSD/PCI reports on this 2019 procurement that is already occurring is due June 1, 2020. If the regulations are adopted in 2019, it should be clear that the effective date for the changed PSD/PCL reporting is June 1, 2021, not June 1, 2020. Similarly, should adoption be delayed into 2020, the clear effective date should be June 1, 2022.

In this specific case, AB 1110 required the CEC to adopt regulations to implement the law by January 1, 2018, with reporting based on these regulation due by June 1, 2020, for calendar year 2019 (“occurring after December 31, 2018”). The statute required the regulation to be in place one year prior to the reporting year, allowing utilities time to make adjustments to procurement strategies. Adopting regulations part way into, or after, the reporting year (late 2019 or 2020) and enforcing the provisions on 2019 procurement is inconsistent with the author’s statutorily included lag between regulation adoption and reporting. To argue that reporting must begin on June 1, 2020, because that date is in statute is incongruent since the statute also required adoption of regulations by, “January 1, 2018.” If it is legally acceptable to push off one deadline (adoption of regulations), then it should be acceptable to push off the initial reporting deadline to at least June 1, 2021.

PCL Delivery Date: Currently the Draft Regulations require that the annual PCL be delivered to customers and the CEC by August 30th. Due to the rolling nature of utility billing cycles, this implies that delivery to customers would have to start by August 1st each year. That leaves very little time between when the CEC provides the annual template with the updated California Power mix (historically this comes in early to mid-July) and when the PCL with full product information would need to be on bill inserts/ electronic newsletters. There is insufficient time for finalizing these materials, including any substantive review to ensure the labels conform to the PSD data and provide accurate factual information. Another month of time prior to PCL delivery resolves this problem.

Clarification of GHG Intensity Calculation: A key new feature in the PSD/PCL structure is the calculation and inclusion of GHG intensity. How GHG intensity is calculated for a product is complicated but very critical to get right. Equation 9 in Section 1393(c)(8) provides a simple calculation – intensity is equal to the sum of emissions attributable to the product divided by the retail sales of the product.

The derivation of “attributable emissions” in Equation 8 is also simple, equal to the sum of the “adjusted net purchase” of power from each generator times the emission factor of the generator. The complicated part is the determination of “adjusted net purchase”, which the section says comes from Section 1393(a)(7).

Equation 3 in that latter section is very complicated and uses an unclear quantity to start – Net Purchases or NP. NP is unclear because it appears to be the result of both Equation 1 in Section 1393(a)(5) **and** Equation 2 in Section 1393(a)(6), and there is no clear direction that Equation 2 modifies Equation 1 or vice versa or the calculation comes from one or the other. SMUD requests that this complex of equations should be significantly clarified, perhaps with examples, so that it is clearly and widely understood how this will work. Full credit for PCC1 renewable resources should be made clear in the calculations.

In addition, Equation 3 includes the concept that the adjustment of net purchases comes in part to reflect the idea that some downward adjustment is needed to make total generation match total retail sales. Currently, Equation 3 appears to suggest that net generation from any non-RPS resource will be proportionally adjusted downward to create this match. SMUD agrees that the RPS resources in a product are designated for retail sales and should not be “adjusted downward” to make the totals match. However, SMUD strongly maintains that zero-GHG resources that are not RPS eligible, such as large hydro resources, are also held for the retail customers of a load serving entity and should not be turned down in the match.

GHG Intensity Bar Graph: SMUD continues to suggest that the intensity graph in the PCL be presented in the form of lbs/MWh or tons/MWh, rather than kg/MWh, for two reasons. First, consumers today are still more familiar with lbs and tons as units, rather than the metric kgs. Second, the GHG inventory, MRR, and Cap and Trade program at CARB are all using tons as a GHG metric.

Giving weight to Public Utilities Code section 398.4(h)(7): Unless the CEC sharply reverses course as we have recommended, SMUD recommends that the PSD regulations provide guidance giving full weight to the provisions of PUC section 398.4(h)(7). PUC section 398.4(h) describes what should be included in the PCL, including fuel type (398.4(h)(1-6)). Section 398.4(h)(7) requires the inclusion of unbundled RECs in the label in a format determined by the CEC. However, it also contains the following statement: “A retail supplier may include additional information related to the sources of unbundled renewable energy credits.” This is not a provision that is “outside the label”, this is wholly within the body of the label. The PSD regulations should make clear that load serving entities can include a footnote further describing their unbundled REC procurement within the label, if desired.

SMUD intends to include in our PCL going forward information that we believe accurately describes our unbundled REC procurement, including the underlying renewable sources of our unbundled REC procurement and our understanding that our procurement of unbundled RECs on our customers’ behalf is funneling their dollars to support zero-GHG procurement, as expected.

RPS-Certified Requirement: The PSD/PCL process covers both RPS and non-RPS procurement of renewables. For example, a voluntary green power program may procure RECs, bundled or unbundled, from “eligible” solar, wind, etc. renewables where the underlying generator has not and does not need to be certified for the RPS – because the procurement is not for the purpose of RPS compliance. SMUD requests consideration of modifications to allow voluntary programs to use eligible renewable resources without the full requirement of CEC RPS certification.

E. Conclusion

SMUD again appreciates the opportunity to provide comments regarding the Draft Regulations.

/s/

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cc: Corporate Files (LEG 2019-0070)