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November 12, 2019

California Energy Commission
1516 - 9th Street
Sacramento, CA 95814

Docket number: 19-BSTD-08

Subject Sacramento Municipal Utility District (SMUD) Application to Administer a Neighborhood SolarShares Program

Dear Commissioners:

The Solar Energy Industries Association (SEIA) and The California Solar & Storage Association (CALSSA) submit these comments in response to SMUD's recent letter posted to the docket November 6, 2019.[1]

In its letter, SMUD responds to concerns raised about its proposed Neighborhood SolarShares Program by a number of stakeholders, including SEIA and CALSSA. SMUD asserts that the concerns raised are "generally unrelated to the specific requirements set forth in Part 1, Chapter 10, Section 10-115 of the 2019 Building Codes" and argues that its application meets all the criteria in the code and therefore must be approved. SEIA and CALSSA disagree.

To provide flexibility to builders under the PV mandate, the Commission approved an alternative compliance pathway which would allow community-scale solar systems (hereinafter referred to as "community solar" or "community shared solar electric generation systems") to be paired with new construction if certain criteria were met.[2] The clear intent was to enable an ***alternative*** that would capture similar and equivalent benefits as onsite solar while the majority of compliance

[1] Response to Comments on SMUD Community Shared Electric Generation System Application, November 6, 2019; The comments herein represent the view of SEIA and CALSSA and not any individual member company.
[2] The PV Mandate refers to the new onsite solar requirement promulgated as part of the 2019 Building and Energy Efficiencies Standards (CCR Title 24, Part 1); The Community Solar Compliance language can be found at CCR Title 24, Part 1, Chapter 10, Section 10-115

would occur through rooftop PV.[3] SEIA and CALSSA supported this option recognizing that locally sited and appropriately sized shared solar systems can provide similar benefits to rooftop PV. However, it was never contemplated that this alternative compliance pathway would displace and replace rooftop PV as the dominant compliance pathway, which is the likely result if SMUD's application is approved.

Therefore, the Commission should reject SMUD's application and provide further guidance on Section 10-115 to ensure that the unique benefits of distributed solar accrue to customers through implementation of the PV mandate as intended.

### A. The Commission Has Broad Discretion to Implement the Title 24 Code in a Manner That Is Reasonable and Consistent with the Intent and Spirit of the Code

In its comments, SMUD states the that the Commission cannot impose additional regulatory requirements not included in the code.[4] SEIA and CALSSA do not disagree with SMUD that the Commission cannot impose *new* regulatory requirements outside of the rulemaking process. However, we have not asked the Commission to do so. Rather, we are simply asking the Commission to use its broad authority as the implementing agency of Title 24 to implement the code in a manner that is reasonable and consistent with the spirit and intent of the code.[5] Although SMUD attempts to portray the code as clearly defined in all areas, the reality is that there are portions of the code, including Section 10-115, that are broad or vague, and thus require further definition by the Commission.

SMUD suggests that the Commission must approve its application because it claims to have met all criteria in Section 10-115. However, SMUD fails to recognize that the language in Section 10-115 is permissive. The Commission may grant an application at its discretion if it determines the criteria in the code have been satisfied. The code states in relevant part:

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[3] Frequently Asked Questions, 2019 Building Energy Efficiency Standards at 4 (Importantly, the 2019 Standards allow community-scale PV as an ***alternative renewable resource to onsite PV systems***); In the CEC staff presentation on May 9, 2018, Zero Net Energy lead, Maziar Shirakh presented that the standards' 2019 Benefits - Path to the Future highlighted the CEC's intention to "promote demand flexibility and self-utilization of PV generation" among other benefits; Section 7.4.1 of the *2019 Residential Compliance Manual* states, "entities who wish to serve as administrators of a proposed Community Shared Solar Electric Generation System must…ensure that the Community Shared Solar Generation System provides equivalent benefits to the residential building expected to occur if photovoltaics or batteries had been installed on the building site."

[4] SMUD Comments at 2

[5] Section 25402 of the California Public Resources Code authorizes the Energy Commission to develop and maintain Energy Standards for new buildings. This section of the code, commonly referred to as the Warren-Alquist Act (the act), is direction from the Legislature on the development of Energy Standards in California; 2002 Cal. PUC LEXIS 117 (Cal. P.U.C. February 7, 2002) (Pursuant to the Chevron Doctrine an agency's interpretation of the statutes it is empowered to enforce, and of its own regulations, should be given deference by a reviewing court, unless the interpretation is arbitrary, capricious, or manifestly contrary to the statute or regulation. ( *Chevron U.S.A. v. Natural Resources Defense Council (1984) 467 U.S. 837, 844, 864-866;)*

> "A community shared solar system, other community shared renewable system, community shared battery storage system, or combination of the aforementioned systems (hereinafter referred to as a community shared solar or battery storage system) ***may*** be approved by the Commission as a compliance option…**The Commission shall have the authority to not approve any application that the Commission determines to be inconsistent with the requirements of Section 10-115**."[6]

Thus, the Commission is under no obligation to approve SMUD's application until it is satisfied that the application meets the criteria set forth in the code as these criteria were intended to be applied.[7] And, given that this is the first application of its kind and will be a blueprint for applications going forward, the Commission should proceed with caution to ensure that Section 10-115 is implemented as originally intended. Where there are areas of ambiguity, the Commission should take the time to provide more guidance before approving SMUD's application.

The Commission took a similar step at a recent business meeting when it recognized that the process for an exemption from the code needs to be further developed in a manner consistent with the intent of Title 24, Part 1, Section 10-109(k) and Part 6, Section 150.1(c)14.[8] The Commission recognized that the application before it by Trinity had precedential value in that it was the first application for an exemption, and the code language was sufficiently broad that it needed to be further considered and defined by the Commission before Trinity's application could be approved.

The instant case of SMUD's application is similar. The language in Section 10-115 lacks the detail to evaluate in a vacuum SMUD's application – and perhaps subsequent proposals from other utilities - and merits further definition. This is underscored by the sheer volume of stakeholder comments received by the Commission in opposition to SMUD's application raising questions about the purpose and intent of the community solar compliance pathway. Hastily approving SMUD's application will likely result in a rush of similar applications that will have wide sweeping impacts on the implementation of Title 24 that may be inconsistent with the objectives of the PV residential requirement.

Thus, SEIA and CALSSA continue to recommend that the Commission deny SMUD's application and provide further guidance for implementation of this critical section of the Title 24 code.

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[6] Section 10-115(a); Section 10-115(b)

[7] It should be noted that Section 10-115(c) states that a community solar system **shall** be approved if the criteria are met. However, the community solar system shall be approved ***only*** if it is demonstrated **to the Commission's satisfaction** that all of the requirements of Section 10-115 have been met. Therefore, despite the use of the word **shall** in this section, an application's approval remains contingent on the Commission being satisfied that the application meets all the criteria in the code.

[8] Energy Commission Business Meeting of Oct. 14, 2019 Agenda discussion item 9, Minutes not yet published as of this letter date

### B. The Commission's Guidance Documents and Industry Standards Should be Relied Upon to Develop the Definition of Community Solar for Title 24 Compliance

In its comments, SMUD argues that community solar is not defined in the code and therefore SMUD is not bound to a specific definition for community solar.[9] SMUD argues that the Commission's FAQs are irrelevant because they are not part of the applicable regulations.[10] Further SMUD argues that definitions from other jurisdictions are irrelevant.[11] SMUD is incorrect.

The first rule of statutory construction is to look at the plain meaning of the words used. When a statute is theoretically capable of more than one construction, then the one which most comports with the intent of statute must be chosen.[12] In this case, where the term "community shared solar electric generation systems" (which SEIA and CALSSA referred to as "community solar" in our comments) has not been defined by the Commission, it is reasonable to look to guidance documents related to the code as indicative of the Commission's intent. One such document is the Commission's FAQ document which is specifically intended to explain the meaning of the code. In its FAQs, the Commission describes community-scale solar as follows:

> "The 2019 Standards allow community-scale PV as an alternative renewable resource to onsite PV systems, when approved by the Energy Commission. Community-scale PV systems can range from a few kW to a few MW."[13]

The Commission also describes utility scale solar as projects up to 500 MW or larger.[14] Thus, the FAQ is clearly relevant, as it shows the Commission's intent to define community solar as a small distributed solar project ranging up to a few MW, which the Commission distinguishes from utility scale solar projects that can range upwards of 100 MW or more. SMUD's application relies upon utility scale projects, the largest of which is 160 MW. Thus, SMUD's application is clearly inconsistent with the Commission's conception of community solar as illuminated by the FAQ and should be rejected.

Additionally, SMUD argues that SEIA and CALSSA's references to other jurisdictions are irrelevant. Once again, SMUD is incorrect. Where a term is not defined in statute or code, a court or commission may look to the dictionary definition or other authoritative sources to determine its plain meaning.[15] Community solar is a relatively new concept that is not defined

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[9] SMUD comments at 2
[10] Id.
[11] Id.
[12] *Assembly of the State of California v. Public Utilities Commission,* 12 Cal. 4th 87 (1995) ( Court determined that the Commission's directive that a large portion of the interest component of a refund by Pacific Bell be used to fund consumer education and school telecommunications development was in direct violation of PU Code 453.5 which establishes the manner in which Commission ordered refunds are to be distributed).
[13] Frequently Asked Questions, 2019 Building Energy Efficiency Standards at 4
[14] Id.
[15] California Court of Appeals, 4th District: "Our role in construing a statute is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. (*People v. Jefferson* (1999) 21 Cal.4th 86, 94 [86

in Webster's dictionary. However, the plain meaning of community solar can be ascertained by looking to industry standards.

There are several states that have established community solar programs which share similar characteristics. These states include New York, Massachusetts, and Minnesota. In each of these states, community solar projects are limited to 5 MW or less, are tied to the distribution grid, are located close to load, and offer bill savings to customers that are commensurate with onsite solar systems.[16] These programs stand in stark contrast to SMUD's program, which is comprised of projects that are much larger than 5 MW and offers only marginal bill savings to customers that is not commensurate with rooftop systems.

In fact, Minnesota underwent a similar experience at the launch of its program in 2016 during which time developers attempted to "daisy-chain" projects together to allow for utility scale solar projects to qualify as community solar. The Minnesota PUC quickly recognized that this was inconsistent with the intent of the program, and thus further defined the rules of its program to limit project size.[17]

Given SMUD's attempt to circumvent the Commission's vision for community solar, SEIA and CALSSA urge the Commission to reject SMUD's application and provide more guidance to applicants under Section 10-115.

**C. The Commission Should Find That SMUD's Application Fails the Additionality Requirement Because it is Unlikely to Result in New Solar Capacity Spurred by Title 24**

In its comments, SMUD states that SEIA and CALSSA misrepresent the Additionality criterion, stating that the Additionality criterion does not require Title 24 to spur new solar development. Rather, SMUD argues that the code merely does not allow for double counting of renewable energy.[18] However, this interpretation is inconsistent with the definition of Additionality in the code, and flies in the face of the commonly accepted goal of regulatory additionality - to ensure the development of new renewable capacity that would not have already been spurred by other

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Cal.Rptr.2d 893, 980 P.2d 441].) Because the statutory language is generally the most reliable indicator of that intent, we look first at the words themselves, giving them their usual and ordinary meaning. (*People v. Lawrence* (2000) 24 Cal.4th 219, 230 [99 Cal.Rptr.2d 570, 6 P.3d 228].); United States Court of Appeals for the Second Circuit: "As in all statutory construction cases, we begin with the language of the statute. The first step is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 450 (2002) "[U]nless otherwise defined, statutory words will be interpreted as taking their ordinary, contemporary, common meaning." *United States v. Piervinanzi*, 23 F.3d 670, 677 (2d Cir. 1994).

[16] Massachussetts: https://www.mass.gov/files/documents/2017/10/16/225cmr20.pdf; Minnesota: https://www.revisor.mn.gov/statutes/cite/216b.1641. New York: https://www.nyserda.ny.gov/All%20Programs/Programs/NY%20Sun/Contractors/Value%20of%20Distributed%20Energy%20Resources.

[17] https://programs.dsireusa.org/system/program/detail/282; http://www.startribune.com/minnesota-utilities-commission-approves-size-caps-rate-structure-for-solar-projects/387872592/

[18] SMUD Comments at 3

policies or actions.[19] Further, double counting is already prohibited under state and federal law, as well as certification programs such as Green-e.[20] Thus, defining Additionality as merely not double counting RECs would be a very low bar that is essentially meaningless given that protection from double accounting already exists.

The Title 24 code defines Additionality as "a property of solar offsets whereby the offset causes additional benefits beyond what would occur as a result of all other actions, and which would exclusively benefit the building or property for which the offset substitutes for compliance obligations that would otherwise be required for that building or property, and those benefits would not ever be transferred to other buildings or property."[21]

While SMUD suggests a limited reading of the Additionality requirement, the better reading of the language – informed by context – is that solar projects that have already been assigned for a specific purpose, voluntary or compliance, cannot be re-assigned for Title 24 compliance. The definition states: "…offset causes additional benefits beyond what would occur as a result of all other actions…" Clearly, existing and planned projects that have not been spurred by Title 24 are the result of other actions and would not meet this bar.

Further, the language in Section 10-115 reads: "Those energy savings benefits shall in no way be attributed to other purposes or transferred to other buildings or property." The Commission may interpret this code section to mean that if a project has been developed for a voluntary green tariff, it cannot then be transferred to Title 24. This reading would in fact be more consistent with the definition of Additionality in the code and the principle of regulatory surplus.

In its comments, SMUD admits that its application is comprised of projects that are already developed or under development to meet its voluntary green tariff program, which it now proposes to repurpose to meet Title 24.[22] This is also supported by SMUD's April 2019 IRP filing, in which it explicitly states that two significant projects it proposes to use in its Title 24 program, including its 160 MW Rancho Seco II project, were already under development to serve its voluntary solar programs well before it filed its application at the Commission.[23] Thus,

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[19] See a discussion of "Regulatory Surplus" in Additionality and Renewable Energy Certificates, Center for Resource Solutions at 2 ("Without regulatory surplus, voluntary actions to purchase and develop renewable energy may not go beyond what is required by law, and will only support compliance with state laws or help meet state targets rather than go beyond them. As such, regulatory surplus is important to sustain clear voluntary claims and help drive the development of renewable energy beyond what is already required.") See CEC Staff Report, RPS Standard Verification Methodology Report, 2nd Ed. (https://ww2.energy.ca.gov/2018publications/CEC-300-2018-008/CEC-300-2018-008-SF.pdf)

[20] Id.; See Federal Trade Commission Green Guides (https://www.ftc.gov/news-events/media-resources/truth-advertising/green-guides); See Green-e Standards (https://resource-solutions.org/wp-content/uploads/2015/07/Explanation-of-Green-e-Energy-Double-Claims-Policy.pdf)

[21] 2019 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, Section 10-102 DEFINITIONS, page 4

[22] SMUD Comments at 5

[23] . https://www.smud.org/-/media/Documents/Corporate/Environmental-Leadership/Integrated-Resource-Plan.ashx See Appendix B, page 10 (p. 141 of the whole document) on Future RPS resources, esp. the 160 MW solar unit at Rancho Seco (2021) and a 100 MW solar project in southern California (2022). For

SMUD's application should be denied as it is comprised of projects that were the result of other considerations by the utility, including its voluntary green tariff program, and not spurred by Title 24 compliance.

Further, SMUD argues that approval of its application will result in additional solar beyond SMUD's RPS obligations.[24] However, this is not consistent with the showing in their most recent IRP filing, which shows that SMUD has sufficient capacity to meet its RPS compliance obligation until 2028.[25] SMUD states that two of the largest solar projects in its community solar application were planned to primarily meet demand for its voluntary green tariff program, not for RPS compliance.[26] Thus, the Commission should carefully consider whether, if approved, its community solar program would actually lead to new RPS procurement as SMUD claims.

Therefore, SEIA and CALSSA urge the Commission to deny SMUD's application and provide further guidance around its Additionality requirement to ensure the code is driving new solar development as intended.

**D. The Commission Should Provide Further Guidance on What Comprises "Net Benefits" Under Section 10-115 To Ensure that the Unique Benefits of Distributed Solar are Delivered to Customers as Was Intended by Title 24**

SMUD argues that it satisfies Section 10-115(a) by providing de minimis benefits to customers, which it asserts is all that is required to meet the "net benefits" standard in the code.[27] SMUD argues that the code should not be read to require equivalent benefits to onsite solar, as this would make the community solar compliance pathway "impossible to use", which is a confounding claim given the success of community solar programs in other states that are based on this principle.[28] Once again, SMUD is advocating for the Commission to narrowly construe the code so that its proposed program can squeak by, as this is the only way SMUD's program would meet the standard.

SMUD relies primarily on a benefit of $5/kW/yr to participating customers to meet the net benefits requirement. This benefit amounts to a few dollars per month in savings for most

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both of these plants, SMUD states "RECs from this facility are expected to be used primarily for SMUD's voluntary renewable programs, with any surplus available to meet RPS requirements."

[24] SMUD Comments at 3

[25] SMUD April 2019 IRP Filling at Appendix B (https://www.smud.org/-/media/Documents/Corporate/Environmental-Leadership/Integrated-Resource-Plan.ashx)

[26] Id. at 10 (An agreement to purchase generation from new 13 MW solar PV facility located in SMUD's service territory, which is expected to begin operations starting in 2020. RECs from this facility are expected to be used for SMUD's voluntary renewable programs, with any surplus available to meet RPS requirements; SMUD is working on developing a new 160 MW solar PV facility located at SMUD's Rancho Seco site which is expected to be online in 2021. RECs from this facility are expected to be used primarily for SMUD's voluntary renewable programs, with any surplus available to meet RPS requirements.)

[27] SMUD Comments at 5

[28] SMUD Comments at 4

customers, significantly less than bill savings for customers with onsite solar, which is estimated by the Commission to be approximately $35/month on average.[29] SMUD acknowledges that the compliance manual states that the benefits of the community solar option should be equivalent to onsite PV, but states that the manual is not controlling and therefore should be ignored. [30] Once again, SMUD is incorrect. The compliance manual speaks directly to the manner in which the Commission intends for the code to be ***complied with*** and therefore does inform how Section 10-115(a)(3) is implemented. Thus, when considering the net benefits requirement, SMUD's application should be measured against onsite PV as directed by the compliance manual.

Perhaps more concerning than SMUD's attempt to establish a minimal standard for compliance, is the impact that approving SMUD's application will have on the ability of California residents to access the benefits of distributed solar that the code is intended to deliver. The Commission acknowledges these benefits in its FAQs:

> Onsite or rooftop PV systems are generally only a few kW. The installed equipment costs are around $3 per watt. The benefits of these systems are that they do contribute to CO2 reduction from building loads, they do not require land acquisition (the roof is existing and available for PV deployment at no additional cost) or additional transmission and distribution infrastructure because the system is close to the load it serves. As part of a local distributed energy resource (DER) system and because of the proximity to the loads it serves, an onsite PV system, once coupled with smart inverters, demand response, and a battery storage system, can enhance grid reliability and resilience. The benefits of a DER system include providing ancillary services (frequency and voltage regulation) and improved reliability during grid failures, natural disasters, and wildfires. Further, the distributed nature of small generation systems reduces the grid's overall vulnerability to cyberattacks. Onsite efficiency and PV systems allow building occupants to save each month on their utility bills, making home ownership more affordable.[31]

While utility scale solar is an important part of California's energy mix and is essential to meeting the state's climate targets, it is incontrovertible that distributed resources deliver unique benefits. With the increase in wildfires and power shutoffs, customers need access to resources that will make their power more reliable and help them keep the lights on. The PV mandate presents an opportunity for the state to ensure that new homes have these resources installed going forward. Contrary to SMUD's assertions, these benefits are not conferred in the same manner by large scale solar that is not geographically proximate to load. If SMUD's application is approved, it is likely that similar applications will follow as it will be much easier for builders to merely contract for RECs than install PV onsite to satisfy the requirement. As a

[29] Frequently Asked Questions, 2019 Building Energy Efficiency Standards at 2
[30] SMUD Comments at 5; Section 7.4.1 of the *2019 Residential Compliance Manual* states, "entities who wish to serve as administrators of a proposed Community Shared Solar Electric Generation System must…**ensure that the Community Shared Solar Generation System provides equivalent benefits to the residential building expected to occur if photovoltaics or batteries had been installed on the building site."**
[31] Frequently Asked Questions, 2019 Building Energy Efficiency Standards at 4

result, very little additional onsite solar will be added to new homes, and the unique benefits of onsite solar recognized by the Commission will not accrue to residents of new homes.

For the reasons discussed herein, SEIA and CALSSA urge the Commission to reject SMUD's application and provide further guidance on Section 10-115 to ensure that the community solar compliance option is implemented in a manner that is consistent with the policy objectives of the PV mandate.

Sincerely,

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