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SMUD Comments Re 15 Language to Implement Assembly Bill 1110

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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
)	15-Day Language Modification of
)	Regulations Governing the Power
)	Source Disclosure Program
)	
)	December 10, 2019

**COMMENTS OF SACRAMENTO MUNICIPAL UTILITY DISTRICT
ON 15-DAY LANGUAGE TO IMPLEMENT ASSEMBLY BILL 1110**

The Sacramento Municipal Utility District (“SMUD”) respectfully submits the following comments to the California Energy Commission (“CEC”) regarding the 15-day Language to Implement Assembly Bill 1110 (“15-Day Language”).

SMUD appreciates the added flexibility the CEC has incorporated into **§1394.1(b) Retail Disclosure to Consumers** of the 15-Day Language, which allows for the delivery of the Power Content Label (PCL) to customers served by each electricity portfolio through the third quarter of the year. Due to the rolling nature of utility billing cycles, this improved timeline allows sufficient time to ensure that labels conform to the Power Source Disclosure (PSD) data and provide accurate information to consumers.

SMUD continues to be concerned that the 15-Day Language will result in a PCL that is misleading to consumers who value renewable energy investments. SMUD also reiterates our concern that the 15-Language does not represent the reality of electricity contracting, procurement, or delivery in California and throughout the West. The ability to use mechanisms such as Renewable Energy Credits (“RECs”) to track renewable energy procurement across systems and political boundaries in a regional grid is essential to reliable, resilient electric service meeting California’s energy policy goals. Nothing in AB 1110 requires the treatment of unbundled RECs and firmed and shaped contracts as proposed in the 15-Day Language. The 15-Day Language is unnecessarily inconsistent with the RPS program that is jointly managed by the CEC and CPUC with respect to unbundled RECs, as well as with the existing structures underlying renewable PPAs and most electricity transactions across the West. The 15-Day Language is also inconsistent with CARB’s Cap and Trade program, including treatment of “firmed and shaped” resources.

The regulation revisions in the 15-Day Language do not address many concerns SMUD continues to have with the PSD and PCL requirements, including:

- An apparent effective date for the adopted changes to the PSD and PCL that would require reporting for now historical 2019 procurement based on the pending regulations that were not in existence when utilities were making procurement decisions. This will result in misaligned and misleading data provided to utility customers, leading to confusion and misunderstanding by the customers directly contrary to the objective of the PCL. Rather, the regulations should be structured so that the revised reporting approach applies no earlier than the 2021 reporting year covering 2020 procurement.
- The proposed treatment of unbundled RECs on the PCL. Specifically, the 15-day Language errs in treating unbundled RECs as unspecified power in the power mix and for GHG intensity calculations. Rather, the renewable generation underlying an unbundled REC should be included in the power mix and convey the zero-GHG nature of the procurement for the product.
- The proposed treatment showing GHG emissions for the eligible renewable “firmed and shaped” contracts due to the importing of “substitute power” associated with that eligible renewable procurement. Grandfathering of existing firmed and shaped contracts as proposed is insufficient to resolve this error. Rather, the GHG emissions of the underlying renewable procurement should always be reflected in the consumer-facing PCL, consistent with the proposed reflection of that power in the power mix portion of the paper.

SMUD will not repeat the detailed comments supporting these changes that were provided in response to the 45-day language. However, if the 15-day language is adopted as written, SMUD is concerned about the negative impacts on the renewable marketplace. Hence, SMUD recommends that the 15-day language not be adopted and that the Commission return to the drawing board once again to consider changes that would achieve greater consistency with the RPS, the Federal Trade Commission’s treatment of RECs for environmental claims, and with the way that renewable power is marketed and tracked in the Western Interconnect. The Commission’s environmental assessment supporting its proposed negative declaration for the 15-day Language fails to address the significant potential negative impacts on the renewable energy marketplace in the Western Interconnect, and related significant potential negative impacts on air quality in California and throughout the West. As such, these potentially significant impacts resulting from the 15-day Language have not been fully examined or mitigated. Without a proper environmental analysis, the proposed 15-day Language cannot be adopted.

2019 Reporting Should Follow 2019 Procurement Rules, Particularly for Voluntary Renewable Procurement Programs

SMUD does appreciate the 15-day language change that removes the requirement to report GHG emission intensity for 2019 procurement. This change resolves some potential compliance issues for SMUD and other entities with electricity products associated with voluntary green pricing programs. Without this change, marketing materials containing GHG claims for 2019 products under the rules in place at the time could be inconsistent with the after-the-fact data presentation required by the proposed new rules for the PSD report and the PCL. This could have resulted in a violation of Section 1394.1(a)(2) of the regulations which states that GHG marketing claims for an electricity product must match the intensity displayed on the PCL. On the other hand, retail suppliers that may have made GHG claims in the marketing materials for 2019 electricity products, must be able to include information about those claims in the PSD report and PCL, if consistent with the retroactively changed rules. SMUD is seeking clarification that the proposed regulations would allow such optional reporting of GHG emissions intensity for 2019 procurement.

However, this clarification alone **would not fully resolve** the problematic issues associated with changing the reporting rules after the procurement has occurred. SMUD strongly suggests that the effective date for the all the changes for PSD/PCL power mix and GHG reporting should occur no sooner than one year after the new rules impacting reportable procurement are adopted. Thus, if the new rules are adopted in 2019, then the regulatory changes should apply to the 2020 procurements reported in 2021 and reflected in the 2022 PCL. This follows the implementation timeframe established in AB 1110, where a year or more was provided between regulation adoption and reporting requirements, so that reporting would not apply to procurement that occurred prior to the effective date of the regulations. The Commission should follow the general principle that the effective dates of regulations should not “reach backwards” to cover decisions that regulated parties have already made. To do otherwise could cause retroactive non-compliance, substantially increased costs to revise decisions, or both.

Procurement decisions for 2019 products were made long ago. Those products have been marketed to customers under the current PSD/PCL regulations, and marketing materials have shown them the content procured for the products they purchased based on the regulations in effect in 2019. Requiring entities to report 2019 procurement under the new proposed regulations is highly problematic, particularly for electricity products associated with voluntary green pricing programs. A retroactive effective date for the adopted changes to the PSD and PCL based on the 15-Day Language will result in inconsistencies between 2019 procurement, marketing materials, and the PCL provided to customers, causing significant problems for the customers of these products. In particular, 2019 SMUD Greenergy customers have been marketed a 100% renewable product, and expect to get a PCL that reflects what they procured. If SMUD is forced by the retroactively changed reporting regulations to provide a PCL showing very little renewable power, it may cause violations in the LEED and CEQA obligations that these customers entered into in good faith, under which they must prove continued

use of green power backed up for Greenergy procurement by the PCL. It is not clear what recourse these customers have for their 2019 procurement obligations. This also inappropriately calls into question SMUD's reputation, with our good faith promise to these customers retroactively made faulty by Commission action. SMUD cannot retroactively change its procurement for electricity that has served load in 2019 to ensure alignment of marketing materials issued prior to the issuance of the proposed rule changes. Understandably, we object to this retroactive effect of the proposed 15-day Language proposals.

Therefore, SMUD requests that the effective date of the new reporting requirements be no sooner than June 1, 2021. If that change is not made then SMUD requests that reporting of the 2019 power mix be grandfathered under the existing regulation that was in place throughout 2019. If the proposed regulations are not revised incorporate this change, SMUD requests that the adoption resolution include a provision that the 2019 power mix reporting in the PCL will be allowed to follow the rules in place when that procurement occurred for voluntary electricity products. This part of the resolution should read:

FURTHER BE IT RESOLVED, that retail suppliers of electricity products provided to customers in 2019 under green pricing and other voluntary procurement programs may voluntarily continue to follow the Power Source Disclosure provisions of the regulations in place during 2019 procurement as they provide the Power Source Disclosure report to the Commission and the Power Content Label to these customers, notwithstanding the reporting and labelling regulatory changes adopted today.

The Proposed Reconciliation Language Should Not Reduce Renewable Procurement

One change in the 15-day language should be rescinded. The 15-day language changes in section 1393(a)(6) should revert back to the original changes proposed in the 45-day language. The changes to the last sentence of section 1393(a)(6) would require reducing the amount of renewable generation on the PCL in the event that total specified purchases from non-fossil resources exceed retail sales. While this change does not affect the GHG emissions that will need to be reported in the PCL since the resources affected are all zero-GHG resources, it could affect the amount of renewables presented to customers and hence may underreport the investments that customers have made in renewable generation. Therefore, SMUD requests that the 45-day language be reinstated, or that the language be modified as follows (changes shown relative to the 15-day language):

*1393(a)(6) ... If an electricity portfolio has insufficient natural gas or coal and other fossil fuel electricity sources to adjust to reconcile the excess specified net procurements with retail sales, all other **non-renewable** specified purchases shall then be proportionally reduced in accordance with Equation 3.*

The Proposed Footnote on Unbundled RECs is Inaccurate

The proposed footnote regarding unbundled RECs in the 15-day Language is inaccurate and potentially confusing to consumers. The footnote (in section 1394(l)(2)) now states:

“... Renewable energy credits (RECs) are tracking instruments issued for renewable generation. Unbundled renewable energy credits (RECs) **represent renewable generation that was not delivered to serve retail sales** ~~investments that do not deliver electricity to the retail supplier’s customers...~~”.

There are two problematic issues in this language. First, it is inaccurate that unbundled RECs represent renewable generation that was not delivered to serve retail sales. Renewable generation occurred, was delivered to the grid, and almost certainly served retail sales somewhere, even if that exact electricity was not delivered to the customers of the retail supplier submitting the PCL. Adding the words “... *for this electricity product* ...” after the existing words “retail sales” is essential for accuracy. Second, the footnote uses the acronym “RECs” to represent a tracking instrument for all renewable generation – including bundled, as well as to reflect the concept of unbundled RECs. This is confusing to consumers.

As always, SMUD appreciates the Commission’s hard work on this matter, and thanks the Commission for this opportunity to provide comments regarding the 15-Day Language.

/s/

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cc: Corporate Files (LEG 2019-0242)