DOCKETED	
Docket Number:	16-RPS-03
Project Title:	Amendments to Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities
TN #:	231579
Document Title:	SMUD Comments Re Proposed Pre-Rulemaking
Description:	N/A
Filer:	System
Organization:	SMUD/Martha Helak
Submitter Role:	Public Agency
Submission Date:	1/17/2020 1:26:12 PM
Docketed Date:	1/17/2020

Comment Received From: Martha Helak
Submitted On: 1/17/2020
Docket Number: 16-RPS-03

SMUD Comments Re Proposed Pre-Rulemaking 16-RPS-03

SMUD Comments Re: Proposed Pre-Rulemaking Amendments to Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities - 16-RPS-03

Additional submitted attachment is included below.

STATE OF CALIFORNIA
BEFORE THE CALIFORNIA ENERGY COMMISSION

In the matter of:	)	Docket No. 16-RPS-03
	)	
Amendments to Regulations	)	SMUD Comments Re:
Specifying Enforcement Procedures	)	Proposed Pre-Rulemaking Amendments
for the Renewables Portfolio Standard	)	to Enforcement Procedures for the
for Local Publicly Owned Electric	)	Renewables Portfolio Standard for Local
Utilities	)	Publicly Owned Electric Utilities
	)	
		January 17, 2020

Comments of SACRAMENTO MUNICIPAL UTILITIES DISTRICT on Pre-Rulemaking Amendments to Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities

The Sacramento Municipal Utility District (SMUD) respectfully submits these comments to the California Energy Commission (CEC) regarding the proposed Pre-Rulemaking Amendments to *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* ("Enforcement Regulations"). The proposed Enforcement Regulations fulfill the requirement of Public Utilities Code §399.30(o) directing the CEC to adopt regulations specifying procedures for the enforcement of the renewables portfolio standard (RPS) on publicly owned electric utilities (POUs) under Article 16 (commencing with §399.11) of Chapter 2.3 of Part I of Public Utilities Code (PUC). The proposed Enforcement Regulations identify the procedures that the CEC will use to determine whether a POU's renewable procurement actions comply with the RPS requirements in the law.

SMUD was an early adopter of the RPS and strongly supports the State's efforts to reduce greenhouse gas emissions (GHG) and increase development of renewable resources. SMUD's integrated resource plan that was approved by the CEC in December 2019, sets a net-zero GHG target by 2040 that identifies the need for a significant amount of additional renewable resources.

SMUD appreciates the thoughtful approach CEC staff has taken to amend the Enforcement Regulations and generally supports the provisions in the proposed amendments as consistent with the legislative intent of SB 350 (2015) and SB 100 (2018). However, there are several areas where clarification is needed. Our concerns and proposed solutions are provided herein.

Methodology for Determining 4th, 5th, and 6th Compliance Period RPS Targets

In order to attain a target of generating 60%of total retail sales of electricity in California from eligible renewable energy sources by December 31, 2030, the CEC proposes a straight-line averaging methodology for setting compliance period targets for the 4th and 6th Compliance Periods, which aligns with the CPUC-adopted methodology and is consistent with the

methodology previously adopted for the 2nd and 3rd Compliance Periods. However, the proposed Enforcement Regulations adopt a modified methodology for the 5th Compliance Period. The "50% by 2026" language resides in the intent section of the statutes (PUC §399.11(a)) and is a holdover from previous versions of SB 100 – it is not carried over into PUC §399.30(b)(5) and §399.30(c)(2), specifying the end of compliance period targets. This allows the CEC to apply the straight-line methodology in the 5th Compliance Period without violating the intent of the statute.

SMUD recommends that the CEC apply a straight-line averaging methodology for the 5th Compliance Period. This approach would provide consistency across all Compliance Periods through 2030 (Compliance Period 1 was an exception where the target remained a constant 20% throughout) and would harmonize the CEC methodology with the CPUC-adopted methodology.

Long-Term Procurement Requirement (LTR)

SMUD reiterates the position expressed in our October 1st comment letter to staff that the LTR should be implemented as a **separate, independent compliance obligation**, in which LTR compliance has no impact on POU compliance with the RPS procurement target and portfolio balance requirements (PBR). However, the independent compliance option should be implemented with full ability to use the "delay of timely compliance" provisions available in the current RPS structure. SMUD strongly opposes a dependent compliance implementation, because such an approach forces LTR compliance at the risk of causing POU non-compliance with the procurement target and PBR. The CEC should not establish a practice of disallowing good faith renewable procurement by a POU in order to "force" compliance with one specific obligation encompassed in the RPS requirements. The CEC achieves its goal of enforcing the LTR by treating failure to meet those requirements as a separate violation of the POU obligations.

SMUD recommends that the CEC retain the approach reflected in the proposed Enforcement Regulations assessing compliance independently from the procurement quantity requirements and the PBR.

Optional Compliance Mechanisms

SMUD strongly opposes any implementation of the Enforcement Regulations that would not apply the "delay of timely compliance" provisions to the LTR. The legislative intent of PUC §399 does not support restricting the delay of timely compliance provisions only to the procurement targets.

The primary reasons why a POU may be unexpectedly fall short on long-term procurement are generally due to events outside the utility's control, like the failure or delay of a project that is under development under a long-term contract or the failure of an existing long-term resource. The CEC should ensure that the modifications to the RPS regulations do not inadvertently punish a POU that has taken all reasonable actions to secure required long-term resources and where actions outside of its control results in a shortfall.

Further, the CEC should not eliminate or limit optional compliance mechanisms that would otherwise provide reasonable protections for a POU's ratepayers.

Inadequate transmission is another potential reason for delay of timely compliance mentioned in PUC §399.15(b)(5). PUC §399.13 requires an annual compliance plan, complete with an analysis of potential compliance delays related to the conditions described in paragraph (5) of subdivision (b) of PUC §399.15. Clearly, PUC §399.13 and §399.15 are closely linked with respect to the question of delay of timely compliance and contemplate application of the optional compliance mechanism to LTR.

SMUD urges the CEC to allow these optional compliance mechanisms to be applied to the LTR. A better interpretation of these provisions is that they refer broadly to the overall RPS program in law as it is modified over time.

Definition of Long-Term Contract

SMUD appreciates that the proposed Enforcement Regulations recognize some contract amendments should retain or be accorded the status of a long-term procurement. SMUD recommends the CEC engage in further stakeholder dialogue on what scenarios may constitute a long-term contract, so that normal contract operations are not improperly characterized. The LTR has been included in the RPS to support long-term *planning* and help new generation projects secure lower-cost *financing.* If the LTR is not executed prudently, it could result in constraints that may reduce long term planning and reliability opportunities and raise costs. Therefore, the CEC should implement the LTR with maximum flexibility needed for POUs to secure a least-cost, best-fit plan for their ratepayers.

The renewables market needs flexibility at the end of contracts to accommodate the short-term extension of a contract that effectively turns a less-than 10-year contract into a greater-than 10-year contract. Consider the following cases wherein: a) a procuring entity may need just a few more months or years from a current expiring contract before a new resource comes on line; b) a generator may need just a few more months or years under a contract before it is decommissioned or moves to another signed contract; and c) a generator may need to match output to multiple contracting structures. For example, a generator may have secured a 7-year contract to provide 50% of its output, as well as a 10-year contract for the remaining 50%. Allowing the 7-year contract to be extended to a 10-year contract provides for the entire generation from the facility over time to be fully contracted in the simplest fashion.

If a short-term contract is extended so that the entire term of the contract meets or exceeds 10 years, then effective at the time of the amendment the procurement contract should be considered a long-term contract. For example, if a 5-year contract, in year 4, were extended for an additional 6 years, then all procurement that occurs after execution of the extension should be considered long-term procurement.

Additionally, the CEC should clarify that changes in resource delivery within a long-term contract that result in less than anticipated RECs (or no RECs generated or retired) at one or more points during the term, do not invalidate the long-term nature of the contract. Provided the original terms of the contract are unchanged, this variability should not create the need for an amendment. Variability from year to year from a contracted or owned renewable resource could occur for a variety of reasons, such as damage to the facility or transmission infrastructure, lack of sufficient fuel to operate at expected capacity, or resale of the resource due to over procurement or other economic reasons.

Under these circumstances where no changes are made to the original long-term contract, all RECs retired by the POU with the long-term contract should be considered as long-term; an interruption in resource delivery from the contract as described above should not impact that "long-term" quality. Any RECs retired pursuant to a short-term resale of the resource would be subject to the provisions of the resale agreement rather than the original long-term agreement (i.e., if a POU resells RECs for years 3 and 4 of a 10-year contract, the entity procuring the RECs during years 3 and 4 would classify them as short-term).

For clarity, a resale of RECs or bundled energy plus RECs for part of a contract term, while retaining ownership of the original contract, should not be confused with the **assignment** of a contract (where ownership of the original contract and all its terms are transferred from one entity to another). SMUD strongly supports the concept that a long-term POU contract that is assigned to another POU should retain the long-term nature of the original contract, irrespective of how many years the POU actually receives resources under the contract.

SMUD recommends that the application of the LTR definition be clarified in the Enforcement Regulations as outlined above to accomplish this necessary operational flexibility.

Treatment of Pre-June 2010 Procurement

The proposed Enforcement Regulation suggests classifying pre-June 2010 procurement based on the length of the original contract, while portfolio content category (PCC) 0 and historic carryover will be considered long-term regardless of contract length. These contracts are essentially the equivalent of a PCC 0 resource, with the exception that rules were not in place prior to June 2010, allowing them to be certified as an eligible RPS resource. While these resources are technically classified as a PCC 1, 2, or 3, they are treated in the same fashion as a PCC 0 (count-in-full) in the RPS calculations. For example, a pre-June 2010, PCC 3 REC does not count toward the PCC 3 maximum allowance in the portfolio balance requirement (PBR). The resources that fall into the pre-June 2010 category are limited, and a piecemeal approach to classifying this procurement will introduce inconsistency and an unnecessary level of complexity into the LTR program. This approach is further supported by the fact that any remaining contracts under this category will already be 10-plus years in length by the time revised regulations are likely adopted.

SMUD believes that consistency is vital as the RPS program evolves and matures. To that end, pre-June 2010 procurement should also be considered as long-term, similar to the treatment of PCC 0 and historic carryover.

Green Pricing Program – §3204(b) Exemptions and Adjustments

The proposed Enforcement Regulations provide for an exemption from retail sales for eligible renewable energy resources that are credited to a participating customer pursuant to voluntary green pricing and shared renewable programs (collectively referenced as "voluntary renewable programs" for these comments) for the purpose of determining a POU's RPS obligation.

Section 3204(b)(9)(c) of the proposed Enforcement Regulation inappropriately substitutes the terms "**subtract, subtracted, subtraction, subtracting**" (collectively referenced as "**subtract**" throughout remainder of these comments) in place of the terms "**exclude, excluded, exclusion**" (collectively referenced as "**exclude**" throughout remainder of these comments) which are used in PUC §399.30(c)(4). In this context, the term "**subtract**" can be misinterpreted and problematic for POUs like SMUD who strongly support the goals of SB 100 and participate in multiple programs that promote renewable energy resources, including the California Air Resources Board's (CARB) Voluntary Renewable Electricity Program (VREP). While seemingly minor, this change can result in undesired interpretations of how renewable energy credits (RECs) retired for voluntary renewable programs (and only for this purpose) are being used, and specifically whether RECs are used for multiple programs. Many of these voluntary programs prohibit using RECs for multiple programs, and providing documentation or WREGIS reports to various agencies to help substantiate voluntary program claims should not be interpreted as having retired these RECs for those programs (i.e., RPS, VREP, etc.).

As an example, late in 2018 CEC staff notified SMUD that there was a potential issue with RECs used to demonstrate eligibility for the voluntary renewable program exclusion and the use of those RECs in the VREP. The issue was identified through collaboration with CARB staff as part of the Compliance Period 2 verification process. As a result of this identified issue, CARB subsequently reached out to SMUD as part of their audit of 2015, 2016, and 2017 VREP participation. In a request for additional information, CARB stated that, "…the audit identified that Sacramento Municipal Utility District (SMUD) used the same electricity and RECs to retire allowances in the VRE program and to reduce its Renewable Portfolio Standard (RPS) requirement for Compliance Period 2 in the years 2015 and 2016." They went on to further request that SMUD provide additional documentation that, "…clearly states how SMUD's retirement of the same RECs both for the VRE program and for reducing its RPS requirement, is in conformance with the signed attestations provided with the VRE program applications."

After nearly 5 months and providing CARB with further information on multiple occasions, a determination was made that there was **NO** retirement of the same RECs for both programs. SMUD's position was, and still is, that RECs retired for our voluntary renewable programs are retired solely for, and on behalf of, the customers participating in the voluntary renewable programs. WREGIS reports are provided to the CEC (RPS) and CARB (VREP) to substantiate that those RECs meet the statutory or regulatory requirement to be excluded from retail sales for the RPS, and to have allowances retired on behalf of these customers through the VREP.

This example illustrates the fine line between how this regulation can be interpreted and the need to ensure the language does not result in unwanted consequences.

The terms "**exclude**" and "**subtract**" have slightly different meaning. While we agree that the mechanism/calculation by which the appropriate retails sales are mathematically determined is accomplished by subtracting the "qualifying" voluntary renewable program loads from total retail sales, the "**exclude**" term that is used multiple times in PUC 399.30(c)(4) should be retained in the Enforcement Regulation to ensure that the proper interpretation of this language is not lost.

Voluntary renewable programs can play an important role in meeting the state's SB 100 goals by promoting renewable energy. For the past three years, SMUD has achieved the second highest participation rate of all utility green pricing programs in the nation. In 2018, SMUD's voluntary renewable programs served more the one million MWh of load using a combination of PCC 1 and PCC 3 RECs. Promotion and expansion of voluntary renewable programs result in greater procurement of renewable resources than would otherwise be procured to simply meet RPS obligations.

SMUD respectfully requests that references to "**subtract**" in §3204(b)(9)(c) be amended to read "**exclude**," except in any cases that reference the mechanics (formulas) to implement the exclusion.

Green Pricing Program – Reasonable Proximity

SMUD supports the current language in the proposed regulation, which endorses an appropriately broad and flexible definition/interpretation of "reasonable proximity" for the purpose of procuring qualifying electricity products for green pricing programs. As voluntary renewable programs grow, it becomes more difficult to procure sufficient renewable resources located "close" to the load, and it is critical that the definition of reasonable proximity be flexible as to allow for the procurement of cost-effective renewables that promote the expansion of these programs. As identified in earlier comments, SMUD's voluntary renewable program load in 2018 was over 1 million MWh, or almost 10% of total retail sales. We reiterate that these programs result in procurement of more renewable resources than would otherwise occur to just meet the RPS obligations.

SMUD's various voluntary renewable programs are structured and priced differently, which lends itself to different procurement needs. Some products allow customers to pay a fixed monthly fee, above and beyond their normal monthly bill, in order to receive 100% of their load from renewable and/or carbon free resources. These products allow customers to easily opt into or out of the program, which makes long-term contracts unfavorable due to the uncertain nature of program participation. Additionally, to avoid cost shifting between participating and non-participating customers, contracts to serve these products tend to specify a fixed price for the REC portion of the bundled PCC 1 purchase. Contracts of this nature tend to be short-term (1 – 3 years) for fixed renewable energy and REC quantities from existing resources.

Other products are set up with their own tariff rates, in which the customer pays a certain amount per kWh or electricity usage – so a customer that uses more electricity will pay more than a customer that uses less electricity for the renewable energy procured from the voluntary program. Since the tariff rate is intended to incorporate the costs of procuring the renewable resource (including risks associated with the contract), SMUD has been able to procure long-term contracts to serve these products. Many of the resources used to serve our Solar Shares program have come from new facilities, and we continue to look for new solar projects located both within SMUD's service territory and throughout California. For example, in 2017 SMUD started procuring generation from a new 60 MW solar project in California's central valley that was specifically contracted to primarily meet Solar Shares demand. We also expect to incorporate several additional new projects over the next few years intended to primarily meet voluntary renewable program needs (and RPS obligation when surplus exists), including significantly expanding solar capacity at our Rancho Seco site and the addition of a 100 MW contract with the Navajo Tribal Utility Authority in the southern part of the state.

The varying needs of these different types of voluntary renewable programs require the continued flexible treatment of the contracts/resources that qualify for voluntary renewable programs if we want these programs to continue to expand and support California's emissions reduction goals.

Utilities are vastly different in their geographic and demographic structures. No single measure of reasonable proximity will serve every utility. Such an effort at achieving uniformity will necessarily result in unintended consequences and should be avoided. SMUD suggests instead that the CEC focus on identifying key determining factors that a utility can apply to make an independent determination of "reasonable proximity" for its procurement objectives.

Compliance Reporting

The proposed Enforcement Regulation includes an additional compliance requirement for reporting each type of the POU's own energy consumption—which does not count towards retail sales. This additional requirement would be overly burdensome for POUs and is not relevant to RPS compliance.

SMUD recommends that this proposed new reporting requirement be removed.

Conclusion

SMUD is a member of the California Municipal Utilities Association (CMUA) and has joined the comments submitted by the Joint Publicly Owned Utilities (CMUA, Northern California Power Agency, and Southern California Public Power Authority).

As always, SMUD appreciates the CEC and their staff's hard work on this matter, and thanks the CEC for this opportunity to provide comments on the proposed Pre-Rulemaking Amendments to the RPS Enforcement Regulations.

/s/

JOY MASTACHE
Senior Attorney
Sacramento Municipal Utility District
P.O. Box 15830, MS B406
Sacramento, CA 95852-0830

/s/

MARTHA HELAK
Government Affairs Representative
State Regulatory Affairs
Sacramento Municipal Utility District
P.O. Box 15830, MS B404
Sacramento, CA 95852-0830

/s/

ANTONIO GONÇALVES
Supervising Resource Planner
Sacramento Municipal Utility District
P.O. Box 15830, MS B205
Sacramento, CA 95852-0830

cc: Corporate Files (LEG 2020-0013)