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EXPRESS TERMS 2022 ENERGY CODE, TITLE 24 PARTS 1 AND 6**

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TERMS 2022 ENERGY CODE, TITLE 24 PARTS 1 AND 6

Additional submitted attachment is included below.

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

In the matter of:)	Docket No. 21-BSTD-01
)	
2022 Energy Code Update)	SMUD Comments on Express
Rulemaking)	Terms 2022 Energy Code, Title 24
)	Parts 1 and 6
)	
)	June 21, 2021
)	

**COMMENTS OF SACRAMENTO MUNICIPAL UTILITY DISTRICT
ON EXPRESS TERMS 2022 ENERGY CODE, TITLE 24 PARTS 1 AND 6**

The Sacramento Municipal Utility District (“SMUD”) respectfully submits the following comments to the California Energy Commission (“CEC”) regarding the Express Terms 2022 Energy Code, Title 24 Parts 1 and 6 (“2022 Express Terms”).

SMUD appreciates the CEC’s leadership in prioritizing decarbonization in the 2022 Energy Code. There is a climate change crisis, and we encourage the swift implementation of known strategies that reduce greenhouse gas (GHG) emissions from fossil fuels and refrigerants. California cannot achieve its landmark 2030 and 2045 carbon reduction goals without electrification of most energy end uses. Moving to an all-electric baseline will provide greater access for equity communities to clean energy and energy efficiency to reduce overall utility costs. Building electrification combined with clean electricity is a critical component to meeting the state’s emissions and air pollution goals. Building electrification also has a lower first cost than gas construction and is cost-effective for consumers.¹ SMUD strongly supports the CEC adopting an all-electric baseline for the 2022 Energy Code for residential and commercial buildings.

Introduction

The inclusion of heat pump baselines and the option of community solar to meet on-site PV requirements are important elements in achieving building electrification. SMUD has been generally supportive of staff proposals as noted in our comments throughout the pre-rulemaking.² We offer the following suggestions regarding heat pump baselines

¹ Rocky Mountain Institute (<https://rmi.org/insight/the-economics-of-electrifying-buildings/>; <https://www.greenbiz.com/article/yes-clean-electric-buildings-can-reduce-emissions-and-save-money-new-construction>)

² 3/9/2021 SMUD Comments on Pre-Rulemaking Express Terms for 2022 Update to Energy Code (<https://efiling.energy.ca.gov/GetDocument.aspx?tn=237060&DocumentContentId=70238>)

and community solar to improve the 2022 Express Terms. We also support the dozens of other stakeholders who have advocated throughout this rulemaking for strong building decarbonization standards, including an all-electric baseline.

Community Solar

With respect to Community Solar, SMUD offers three primary considerations for staff. First, while SMUD does not oppose an opt-out provision, SMUD is concerned that as written, the inclusion of an opt-out will discourage prospective program administrators from entering the market. Moreover, if an opt-out is conditioned on installation of a code-compliant onsite PV system, staff should clarify that administrators, as the providers of energy, are not and cannot be the entities responsible for code compliance.

Second, with respect to choice at the point of purchase, SMUD notes that the inclusion of an opt-out provision obviates the need for such choice. If the customer is free to opt-out upon installation of an onsite PV or battery storage system, there is no need to add additional logistical hurdles, costs, and delays to the construction process, particularly while California is in the midst of a housing crisis.

Finally, with respect to provisions relating to Executive Director approval of revised applications, SMUD notes that future changes to the requirements of section 10-115 cannot be applied retroactively to require amendments to approved projects, programs, or customer agreements. Community solar administrators, customers, and other stakeholders that have taken action or entered into contracts based on applications that have been previously approved by the Commission should not be subjected to the uncertainty of future Code modifications.

Heat Pump Baselines

SMUD supports the Express Terms' inclusion of electric appliances in the baseline for new residential construction. We appreciate the Commission's incorporation of prior comments which include:³

- Updated space and water heating electric baselines that will require at least one electric appliance in each climate zone (and generally the bigger of the space and water heating appliances in most of the high-construction zones);

12/23/20 SMUD Comments Re 2022 Energy Code Solar PV & HP Baselines

(<https://efiling.energy.ca.gov/GetDocument.aspx?tn=236132&DocumentContentId=69129>)

07/08/20 SMUD Letter to CEC Commissioners 2022 Energy Code

(<https://efiling.energy.ca.gov/GetDocument.aspx?tn=233801&DocumentContentId=66449>)

04/10/20 SMUD Comments on 2022 Energy Code Compliance Metrics

(<https://efiling.energy.ca.gov/GetDocument.aspx?tn=232711&DocumentContentId=64781>)

³ 2/11/21 NRDC and 13 Organizations Joint Comments on January 26, 2021 Workshop on Single-Family Electrification (<https://efiling.energy.ca.gov/GetDocument.aspx?tn=236741&DocumentContentId=69767>)

- All-electric readiness measures for space heating, water heating, stoves, and dryers;
- Differentiated range hood ventilation requirements for gas and electric stoves for both residential and multifamily construction; and
- Electric heat pump space and water heating baselines in schools.

For California to shift to all-electric new construction in order to meet its climate goals, avoid future costs, and proactively send the right signals to builders and appliance manufacturers, we encourage the Commission to make a public commitment to an all-electric 2025 building code.

SMUD may have additional comments on the Express Terms and proposed regulatory language based on these Terms as the rulemaking proceeds. We look forward to working with staff to further refine the Express Terms into feasible regulations that provide necessary certainty to the stakeholders, including end-use customers.

Discussion

1. Section 10-115 - Community Solar

a. 10-115 (a) (4) Building Owner Opt-Out

- i. SMUD does not oppose an opt-out provision but is concerned it will discourage new entrants.**

Community Solar provides developers, builders, and property owners an important, viable alternate compliance option, which is necessary to ensure California meets its clean energy goals. SMUD strongly supports staff's stated intent to "enhance the viability of community-scale projects as an alternative to on-site installation of renewable energy and energy storage systems."⁴ In furtherance of that goal, we join others⁵ in recommending that staff consider the potential implications of imposing an opt-out requirement on program administrators.

Planning for and developing new community solar facilities and programs requires a significant investment of time, resources, and money. Contracts with program participants encourage and protect those investments. A large utility may have the ability to balance and repurpose utility scale resources without significant risk of stranding new community solar assets. However, allowing a customer to cancel a contract or to "opt out" at their convenience could discourage new solar developers and administrators—especially smaller, non-utility administrators—from entering the market.

⁴ Initial Statement of Reasons 2022 Energy Code Proposed Changes, p. 8 (May 6, 2021).

⁵ PG&E, Comments Re: 2022 Building Energy Efficiency Standards (Title 24, Part 6), Pre-Rulemaking Docket 19-BSTD-03 (March 10, 2021).

ii. Staff should clarify that community solar administrators are not the entities responsible for code compliance.

The draft Express Terms allow a program participant to opt-out upon installation of a code-compliant onsite PV or battery storage system. However, Section 10-115, as drafted, does not specify who would be responsible for ensuring compliance prior to installation. To address this ambiguity, SMUD recommends that staff clarify that Local Enforcement Agencies (LEAs), and not administrators, are responsible for compliance and enforcement. LEAs, such as local building departments, have jurisdiction over code enforcement, along with expertise and well-established processes. Program administrators, which may include utilities or other public or private entities, are neither authorized nor equipped to manage compliance obligations and code enforcement.

Finally, as discussed in greater detail below, SMUD requests that staff make clarifying revisions to section 10-115(a)(4) to ensure that interconnection of an onsite PV system does not automatically result in an opt-out, and that program administrators have flexibility in recovering costs incurred to effect the “opt out.”

b. 10-115 (a) (8) Original Building Purchaser Choice: the inclusion of an opt-out provision obviates the need for this option.

The Community Solar option is intended to add choices for builders and customers, rather than restrictions, thereby reducing overall costs to purchasers. SMUD agrees that consumers should have a choice among all available Community Solar and on-site solar options to make fully informed decisions. However, mandating that a builder offer the option of installing an on-site solar generation system is problematic as it could in many cases result in unnecessary infrastructure, the need for duplicative compliance calculations and other efforts, higher costs for purchasers, and penalties to developers that cannot feasibly install on-site solar. Further, such mandate gives preference to on-site solar irrespective of cost. Finally, SMUD believes the inclusion of an opt-out provision obviates the need for the Original Building Purchaser Choice provision. In other words, the original purchaser can choose to opt out of a community solar program after closing escrow and comply with Section 150.1(b)(1) by installing on-site solar at that time. A Community Solar program should not preclude the home purchaser from installing on-site solar or on-site storage in the future.

c. 10-115 (c) Executive Director Approval of Revised Applications - Community Solar administrators should not be required to submit revised applications to existing approved programs to retroactively apply changes to Section 10-115 in future code cycles.

SMUD seeks clarity on the proposed requirement for an administrator “of an *approved* community shared solar electric generation system” [emphasis added] to submit a revised application when the Commission modifies the requirements of the Community Solar regulation provisions. As stated, this broad mandate could effectively necessitate a retroactive application of new revisions to the Code to already implemented programs

previously approved by the Commission. Community Solar administrators, property owners, and other stakeholders act in reliance on the Commission's approvals. For example, as part of SMUD's Neighborhood SolarShares program, the Declaration of Covenants, Conditions and Restrictions (CC&Rs) recorded for Community Solar developments necessarily contain provisions committing the properties to the 20-year Community Solar alternative to ensure compliance with the Code. Complicated and costly changes to the CC&Rs would be required to retroactively permit changes to the Community Solar terms which have already been agreed to via these contracts. Subsequent changes in the law should not invalidate projects and systems in which millions of dollars have been invested. While SMUD supports the application of new requirements to the location and size of new resources, new requirements should not invalidate or otherwise change the terms of previously approved programs.

d. 10-115 (a)(6) Location – Locational requirements are appropriately aligned with individual utility system design.

SMUD is supportive of staff's interest in localizing the Community Solar systems to the communities such systems are intended to serve. Aligning locational requirements with the utility service area rather than city or county boundaries will achieve staff's objective while recognizing the real-world utility system operation. SMUD supports the proposed language requiring the Community Solar project to be located on a distribution system of the utility providing electric service. We suggest that the language be clarified to recognize that a "distribution system" is subject to the design of the specific utility system.

e. 10-115 (a) (7) Size

SMUD also supports the proposed 20 MW or less size parameter for new Community Solar resources. The 20 MW threshold mirrors the maximum size limit for resources in the CPUC Green Tariff/Shared Renewables (GTSR) program and is consistent with the parameters in the Coalition for Community Solar Access March 2019 publication "Community Solar Policy Decision Matrix," which recommends resources be within a utility service area and no more than 20 MW in size.⁶ We caution, however, that Community Solar program standards should be sufficiently flexible to allow projects sized to enable utilities to meet growth in demand. For example, SMUD will only retire RECs on behalf of the Neighborhood SolarShares (NSS) program participants from **new** resources that are **20 MW or less**, unless there is program demand that cannot be met from these resources at a particular point in time.

⁶ <http://www.communitysolaraccess.org/wp-content/uploads/2019/04/2019CommunitySolarPolicyMatrix-2.pdf>, page 14

f. Proposed Revisions to Section 10-115

In consideration of the comments above, SMUD offers the following proposed revisions to section 10-115(a)(4), which SMUD recommends dividing into three new subsections as follows. SMUD's proposed revisions are shown in red:

Section 10-115(a)(4): Durability and Building Opt-out.

- A. The community shared solar electric generation system and/or community shared battery storage system shall be designed and installed to provide the energy savings benefits to the ~~dedicated participating~~ building specified in Section 10-115(a)3 for a period of no less than twenty (20) years.
- B. At any time during this period, the building owner shall have the option to discontinue the participation of the building in the community shared solar and/or battery storage system if and only if the building owner causes an on-site solar electric generation and/or battery storage system to be installed, which meets the requirements of Section 150.1(b)(1) or successor requirements, which were in effect at the time the building was permitted. The local enforcement agency shall verify compliance with the requirements of this subsection 10-115(a)(4)(B) before a building owner discontinues participation in any community shared solar and/or battery storage system. The program administrator shall not be responsible for verifying compliance.
- C. If a building owner chooses to discontinue participation in the community shared solar and/or battery storage system, then At the time of interconnection of that on-site solar electric generation system, all costs and benefits associated with participation in the community shared solar and/or battery storage system shall cease at the time of interconnection of that on-site solar electric generation and/or battery storage system.

Rationale for revisions to section 10-115(a)(4)(B). As set forth above, the 45-Day Language provides participants the ability to opt out of a community solar program upon installation of a compliant onsite PV or battery storage system. However, section 10-115(a)(4) does not identify the entity responsible for ensuring compliance of a compliant onsite PV or battery storage system. Community solar program administrators may have neither the local authority nor technical or administrative ability to enforce the Energy Code. Thus, we recommend clarifying that, consistent with other provisions of the Energy Code, local enforcement agencies are responsible for compliance.

Rationale for revisions to section 10-115(a)(4)(C). Currently, section 10-115(a)(4) states that all costs associated with participation in a community solar program shall cease at the point of interconnection of an onsite PV or battery storage system. In some cases, however, customers may have the ability to install onsite PV or battery storage and simultaneously participate in a community solar program. In such cases, customers would continue to pay costs associated with community solar program participation. Thus, SMUD recommends clarifying that program costs shall cease only in the event the customer discontinues participation in the community solar program.

2. Heat pump baselines

We appreciate the CEC's continued efforts to establish heat pump baselines that promote zero-emission electric construction. These efforts are critical to accelerating building decarbonization in alignment with California's broader emissions reduction goals. Staff's proposal provides meaningful incentives for electrification which should

result in most of the market transitioning to all-electric over the next code period, while giving builders flexibility to transition at their own pace.

Conclusion

SMUD strongly supports advancing the 2022 Energy Code by further prioritizing details that advance building decarbonization. Recognizing the urgency of climate change, we hope the Commission moves swiftly to head off the most critical impacts of this climate crisis. With the extensive data on climate, gas prices, electricity prices, and state policies in support of building decarbonization, updates to the 2022 Energy Code present a prime opportunity to keep pace with other statewide policies and climate goals. With regard to community solar, specifically, we encourage Staff to continue to be forward-thinking in their approach to create a viable program that does not effectively dissuade or even prohibit new Community Solar installations in California.

SMUD appreciates the opportunity to provide comments on the 2022 Energy Code. We look forward to working with the CEC to continue to advance efficient, all-electric construction and provide a Community Solar option as key elements in achieving the state's policy goals.

/s/

DENNIS PETERS
Regulatory Program Manager
Government Affairs
Sacramento Municipal Utility District
P.O. Box 15830, MS B404
Sacramento, CA 95852-0830

/s/

MARISSA O'CONNOR
Attorney
Government Affairs
Sacramento Municipal Utility District
P.O. Box 15830, MS B406
Sacramento, CA 95852-0830

cc: Corporate Files (LEG 2021-0083)