

DOCKETED	
Docket Number:	21-BSTD-01
Project Title:	2022 Energy Code Update Rulemaking
TN #:	239064
Document Title:	SMUD Comments on 15-Day Express Terms 2022 Energy Code
Description:	N/A
Filer:	Nicole Looney
Organization:	Sacramento Municipal Utility District
Submitter Role:	Public Agency
Submission Date:	7/28/2021 4:35:13 PM
Docketed Date:	7/28/2021

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

In the matter of:)	Docket No. 21-BSTD-01
)	
2022 Energy Code Update)	SMUD Comments on 15-Day
Rulemaking)	Express Terms 2022 Energy Code,
)	Title 24 Parts 1 and 6
)	
)	July 28, 2021
)	

**COMMENTS OF SACRAMENTO MUNICIPAL UTILITY DISTRICT
ON 15-DAY 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 15-Day Express Terms 2022 Energy Code, Title 24 Parts 1 and 6 (“2022 Express Terms”).

SMUD Supports Strong Building Decarbonization Standards

SMUD appreciates the CEC’s leadership in prioritizing decarbonization in the 2022 Energy Code. We encourage the swift implementation of known strategies that reduce greenhouse gas (GHG) emissions from fossil fuels and refrigerants to combat the climate change crisis. Electrification of most energy end uses is critical for California to achieve its landmark 2030 and 2045 carbon reduction goals. 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 key 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 joins the dozens of fellow stakeholders who have advocated throughout this rulemaking for strong building decarbonization standards, including an all-electric baseline.

SMUD Recommends Revisions to Section 10-115 (Community Solar) and Cautions Against Overly Prescriptive Regulations

The Energy Code allows Californians to satisfy the Code’s on-site PV requirements by participating in a Commission-approved community solar program. At present, SMUD operates the only Commission-approved program in the state—its Neighborhood SolarShares program.

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>)

Indeed, many of the proposed revisions set forth in the 15-day language mirror elements of SMUD's program design.

Community solar provides an important and valuable compliance option for prospective homeowners, builders, and others. SMUD encourages the Commission to prioritize flexibility in program design to ensure future administrators are interested and able to participate in this market.² As noted during the February, 20 2020 business meeting in which SMUD's Neighborhood SolarShares application was considered and approved, the Commission would welcome administrator applications that reflect diverse, smaller, more localized programs with different business ownership and compensation models.³ And, as the Commissioners also noted during that meeting, elements of program design may be best suited to local administrators--rather than state policy and regulatory bodies such as the Energy Commission.⁴

SMUD supports and agrees with these sentiments. To that end, while the mandates set forth in the proposed regulations may be workable for SMUD, and while SMUD has been generally supportive of staff's proposed revisions to section 10-115,⁵ we caution that overly prescriptive requirements may dissuade or even effectively prohibit other administrators from creating new Title 24 community solar programs in California. Indeed, nearly three years after the 2019 Energy Code was adopted, SMUD remains the sole community solar administrator in the state. SMUD encourages the Commission to adopt flexible regulations to enable that to change.

With that, SMUD offers the following specific comments and proposed revisions to Section 10-115.

²SMUD Comments on 45-Day Express Terms (June 21, 2021).

(<https://efiling.energy.ca.gov/GetDocument.aspx?tn=238339&DocumentContentId=71639>)

Coalition for Community Solar Access Comments on 45-Day Express Terms (June 21, 2021)

(<https://efiling.energy.ca.gov/GetDocument.aspx?tn=238392&DocumentContentId=71700>)

California Municipal Utilities Association Comments on 45-Day Express Terms (June 21, 2021).(<https://efiling.energy.ca.gov/GetDocument.aspx?tn=238371&DocumentContentId=71648>)

PG&E Comments on Energy Code Pre-Rulemaking 03.10.21 (March 19, 2021).

(<https://efiling.energy.ca.gov/GetDocument.aspx?tn=237100&DocumentContentId=70295>)

³(<https://efiling.energy.ca.gov/getdocument.aspx?tn=232313>) Commissioner McAllister p. 209, lines 3-17. (<https://efiling.energy.ca.gov/getdocument.aspx?tn=232313>)

⁴Commissioner Douglas: pg. 216, line 21 through pg. 217, line 5. Commissioner McAllister: pg. 210, lines 4-9. (<https://efiling.energy.ca.gov/getdocument.aspx?tn=232313>)

⁵SMUD Comments on 45-Day Express Terms (June 21, 2021).

(<https://efiling.energy.ca.gov/GetDocument.aspx?tn=238339&DocumentContentId=71639>)

SMUD Comments on Pre-Rulemaking Express Terms for 2022 Update to Energy Code (March 9, 2021).

(<https://efiling.energy.ca.gov/GetDocument.aspx?tn=237060&DocumentContentId=70238>)

SMUD Comments Re 2022 Energy Code Solar PV & HP Baselines (December 23, 2020)

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

Discussion

1. Section 10-115(a)(4)(C) Compliance Documentation

The proposed revisions to this section would require community solar administrators to maintain records of “compliance documentation” that identifies the “requirements for the on-site solar electric generation system and/or battery storage system to comply with the standards in effect at the time the builder applied for the original building permit, and which establishes participants’ obligations to meet the Opt-Out Requirements.” It also requires administrators to provide this documentation to building owners upon request, and upon notification of title transfer, and to any building owner who requests to opt-out.

SMUD recommends revising this section to better reflect realities of program administration and to allow for more flexibility in program design.

First, instead of requiring administrators to house records of “compliance documentation,” SMUD recommends requiring administrators to maintain *information* relating to compliance—specifically, system sizing information. This is the information customers will need if they decide to opt-out. By requiring administrators to record and retain *information* rather than *documentation*, administrators need not build information systems to scan and house legacy records. This is a more efficient and cost-effective way of achieving the same end.

Second, SMUD recommends simplifying the notice requirements and requiring provision of information to customers only upon request. This revision would better reflect the realities of program administration—community solar administrators will not necessarily know when title transfers. For example, many SMUD customers are tenants. In those cases, title to a property may change, but the tenant-customer will remain the same. If SMUD were to provide opt-out information to the tenant-customer, it could confuse that customer, who would not have the right to opt-out. Moreover, information regarding a building owner’s right to opt-out will be provided at the time of title transfer, pursuant to section 10-115(a)(4)(B)(i), and thus this additional requirement is duplicative. SMUD recommends that the regulation leave customer service issues such as this to the expertise and discretion of the community solar administrator.

In consideration of the above, SMUD suggests striking the proposed revisions to Section 10-115(a)(4)(C) and replacing that Section with the following text:

C. Documentation of System Size. The Administrator shall record and maintain information relating to the size of the on-site solar electric generation system the building owner would have been required to install in order to comply with the standards in effect at the time of enrollment in the community solar program. The Administrator shall provide such information to the participating building owner upon request.

2. Section 10-115(4)(B) and 10-115(a)(4)(D): Building Owner Opt-Out

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

As SMUD has previously noted, we support 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."⁶ In furtherance of that goal, we join others⁷ 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.

b. Participant opt-out should be conditioned on compliance with the current Energy Code, rather than obsolete, vintage versions of the Code.

As written, the proposed revisions in 10-115(a)(4)(B) would require, prior to opt-out, that a participant install an onsite solar generation system that complies with an obsolete version of the Energy Code. For example, a participant who joins SMUD's program next year, but ultimately decides to opt out in 2040, would have to install a system that satisfies Code requirements from 2022—requirements that will then have been out of date for nearly two decades. This is problematic from both a policy and an operational perspective. As a matter of policy, current codes reflect, among other things, current environmental concerns, markets and technology, policy priorities, and economics, which, when taken together, help inform the thoughtful triennial revisions to the Energy Code. Requiring compliance with an outdated code simply fails to serve any current or future state policy goals.

From an operational perspective, requiring compliance with vintage codes creates significant hurdles for building owners and administrators and could generate confusion among customers, on-site solar installers, and building officials. From an administrator's perspective, it complicates the opt-out process and requires otherwise unnecessary

⁶ Initial Statement of Reasons 2022 Energy Code Proposed Changes, p. 8 (May 6, 2021). (<https://efiling.energy.ca.gov/GetDocument.aspx?tn=237716&DocumentContentId=70938>)

⁷ PG&E, Comments Re: 2022 Building Energy Efficiency Standards (Title 24, Part 6), Pre-Rulemaking Docket 19-BSTD-03 (March 10, 2021). (<https://efiling.energy.ca.gov/GetDocument.aspx?tn=237100&DocumentContentId=70295>)

document and information management practices.⁸ From a customer's perspective, they might query why they are being held to standards that the state has, in intervening updates to the Energy Code, determined no longer best suit the State's goals or reflect current conditions.

For these reasons, we urge the Commission to consider conditioning opt-out on installation of an onsite system that is compliant with the then-current Energy Code, rather than obsolete versions of the Code that no longer serve the State's objectives.

c. Section 10-115(a)(4)(D)(ii): Compliance and Document Retention

SMUD appreciates clarification that community solar administrators are responsible only for reviewing building owners' opt-out applications and are not the entities responsible for code compliance. As SMUD has previously stated, local building departments have jurisdiction over code enforcement, along with expertise and well-established processes. Community solar program administrators, which may include utilities or other public or private entities, are neither authorized nor equipped to manage compliance obligations and Title 24 code enforcement.

While the 15-day language provides helpful clarification, SMUD recommends striking the following sentence from section 10-115(a)(4)(D)(ii): "*The Administrator shall maintain record of the documentation that demonstrates and confirms the on-site solar generation system met the Opt-Out requirements the remainder of the Participation Period.*" This sentence would require administrators to retain records relating to former participants for up to twenty years. In many cases, administrators will have no ongoing relationship with those former participants yet will still bear the burden of record and information management for retention periods that will be unique to each customer (depending on when their Participation Period ends). The customer is the appropriate custodian of these records and this section already requires the administrator to "*provide written confirmation to the building owner whether, based on the Administrator's review of [the customer's] documentation, the on-site solar generation system satisfies the Opt-Out Requirements.*" Accordingly, the proposed obligation on the administrator to maintain records relating to former customers who have opted out—potentially decades in the past—is burdensome, unnecessary, and adds little, if any, value.

SMUD also recommends deleting the requirement that an administrator complete its review of opt-out documentation "within 30 days." Because the opt-out process is new to these regulations and no administrator has, to date, processed an opt-out, imposing such an obligation is premature. SMUD will review all opt-out applications quickly and diligently. However, without experience to inform how long that process will take or whether it will vary depending on the customer and the quality of the documentation the customer submits, SMUD recommends against imposing a regulatory deadline.

⁸ See proposed Sections 10-115(a)(4)(C) and 10-115(a)(4)(D)(ii) and SMUD's comments herein.

3. 10-115(a)(6) and 10-115(a)(7): Location and Size

While SMUD supports reasonable limits on generating resource size and location, SMUD echoes its earlier concerns that (a) with respect to location, the language should be clarified to recognize that a “distribution system” is subject to the design of the specific utility system; and (b) with respect to size, the regulations should be sufficiently flexible to allow projects sized to enable utilities to meet growth in demand. Addressing these concerns will be critical as the on-site solar requirements expand to building types other than single family residential.

4. 10-115(a)(8): Original Building Purchaser Choice

SMUD supports removal of proposed section 10-115(a)(8) Original Building Purchaser Choice and appreciates staff’s consideration of stakeholder feedback. As SMUD and others noted in prior comments, inclusion of an opt-out provision obviates the need for the Original Building Purchaser Choice provision. Moreover, requiring a builder to offer the option of installing an on-site solar generation system at the point of purchase would have created significant, costly burdens without corresponding benefits.

5. 10-115(c): Executive Director Approval of Revised Applications

SMUD appreciates revisions to section 10-115(c), which clarify that future changes to the Energy Code will not impact existing program participants or resources. Addressing these concerns will be critical as the on-site solar requirements expand to higher load building types other than single family residential. SMUD also appreciates the additional guidance in this section regarding timelines for review and approval of revised applications, which will assist administrators with planning and preparing to adapt their programs to conform to new regulations.

Conclusion

SMUD strongly supports advancing the 2022 Energy Code by further prioritizing building decarbonization. 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 respect to community solar, SMUD appreciates Staff’s collaboration and thoughtful revisions to section 10-115. We encourage the Commission and Staff to continue to be innovative and forward-thinking as these regulations evolve. Community solar is an important compliance tool that benefits all Californians. We encourage the Commission to continue to inspire customer choice, to create a viable solar program that does not effectively dissuade potential program administrators and consumers from participating in Community solar, and to craft reasonable regulations that do not prohibit new Community solar installations in California.

As always, 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 support Community Solar to further 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 2021-0099)