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Comments on the Proposed Pre Rulemaking

Comments of the Sacramento Municipal Utility District on the Proposed Pre-Rulemaking Amendments to the Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities.

Additional submitted attachment is included below.

STATE OF CALIFORNIA
BEFORE THE CALIFORNIA ENERGY COMMISSION

In the matters of:	)	Docket No. 16-RPS-03
	)	
Amendments to the Regulations Specifying Enforcement Procedures for the Renewable Portfolio Standard for Local Publicly Owned Utilities	)	SMUD Comments On: *Proposed Pre-Rulemaking Amendments to POU RPS Regulations*
	)	
		September 9, 2016

Comments of the Sacramento Municipal Utility District on the *Proposed Pre-Rulemaking Amendments to the Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*

Thank you for the opportunity to provide comments on the proposed pre-rulemaking to implement SB 350 through regulations for the Enforcement of the Renewable Portfolio Standard (RPS) on Local Publicly Owned Electric Utilities (POUs) (Proposed Amendments). The Sacramento Municipal Utility District (SMUD) supports most of the Proposed Amendments to implement the 50% RPS, but recommends some changes to that implementation and raises some additional issues, as we explain below.

Implementation of Green Pricing Provisions

The language in SB 350 that allows subtraction from retail sales, prior to calculating the RPS obligation, of certain resources used to serve load in voluntary green pricing programs is important. To the extent such programs expand, more renewable generation results, as these programs encourage our customers voluntarily to go beyond the RPS percentages for all or most of their load. The allowed subtraction removes or reduces a utility disincentive to expand such programs by no longer requiring "double procurement" of renewable power for these customers – RPS procurement on top of the full procurement of renewables for these loads.

Hence, it is important that implementation of this provision does not inadvertently establish barriers to the expansion of programs such as SMUD's "Solarshares" program – where customers can contract to have their load served by shares of larger solar systems, and "Greenergy" – where customers can contract to have 100% of their

load served by renewable power procured by SMUD. The Proposed Amendments do not yet achieve this goal, and should be modified in the following ways:

1) **Implementation of the Subtraction**: The Proposed Amendments include the subtraction from retail sales in Section 3204(b)(8), stating: "... a POU may exclude from retail sales the MWHs generated …that is credited to customers participating in the POU's voluntary green pricing or shared renewable generation program." However, the Proposed Amendments fail to revise the definition of "Retail Sales" or the calculations of the RPS obligation to reflect this statement. As a result, the basic math of the Enforcement Procedures does not implement the voluntary renewable program subtraction.

   The Proposed Amendments should either revise the definition of "Retail Sales", which is used in the RPS obligation calculations in Section 3204(a) to reflect the new subtraction allowed or revise the calculations themselves to reflect the subtraction by explicitly referring to "Retail Sales minus Voluntary Program Component". One or the other of these modifications is necessary for clarity in implementation of the subtraction. SMUD suggests that the former is simpler and cleaner. The only reason for a definition of "Retail Sales" in the Enforcement Procedures is to define what is used in the RPS obligation calculation -- it is reasonable to include the subtraction in that definition.

2) **Inclusion of PCC0**: The Proposed Amendments also err in Section 3204(b)(8)(A), which limits the electricity products excluded from retail sales to products that "… meet the criteria of Portfolio Content Category 1…". SB 350 excludes only PCC2 and PCC3 products, and thus allows electricity products that are grandfathered (known as PCC 0) to be eligible for subtraction. Inclusion of PCC0 products was explicitly negotiated as SB 350 was being considered in the legislature.

   It is not sufficient to include only PCC0 contracts that "… meet the criteria ..." of PCC1 electricity products, meaning that these products would be PCC1 except that they were signed prior to 6/1/2010. SB 350 allows all PCC0 contracts as a matter of initial eligibility, not just those that would otherwise meet PCC1 criteria.

3) **Meaning of "reasonable proximity"**: The proposed language "… located in the POUs service territory …" is not in the statute and is too restrictive an interpretation of the statutory provision "… located in reasonable proximity to program participants." This language severely restricts the availability of eligible resources for most POUs, in comparison to the similar, but not identical, Investor Owned Utility (IOU) programs.

   The three large IOUs have been largely restricted by the CPUC to using resources "within their service territory", although the smallest of the three (with a service territory larger than all but one POU) is allowed to access resources in an area outside its service territory that more than doubles the geographic scope of their "proximity" area. The obvious difference between the IOUs and virtually all POUs is that the former have vast service territories when compared to POUs.

Pacific Gas and Electric (PG&E) has 70,000 square miles of service territory, and Southern California Edison (SCE) has over 50,000 square miles, and San Diego Gas and Electric (SDG&E) has about 10,000 square mile in which to site an eligible resource. With such expanses, it is more likely that a reasonable source of renewable generation can be found (most renewables are tied to specific locations where the resource is available). Importantly, these expanses also contain significant rural areas, in which it is more feasible to site a renewable resource.

Most POUs have nowhere close to the same richness of resource availability as the IOUs with the "within service area" restriction.[1] A restriction of this type, while similar in concept to the restriction on the IOUs, is dissimilar in impact and would create an unequal playing field for most POUs. The CEC can and should remove the "within service territory" restriction. It is not required by SB 350 and is unfair to SMUD and other POUs.

There are several options to establish a fairer interpretation of "reasonable proximity" in SB 350:

a) In addition to the statutory restriction to PCC0 and PCC1 resources, the CEC could interpret "reasonable proximity" to mean that resources should be located within California. Note that RPS-eligible resources, such as PCC0 and PCC1 resources, can be located outside the state, as long as they are within WECC and meet delivery criteria. Thus, an in-state constraint would represent a restriction of eligibility to resources closer in proximity to program participants. This option establishes an eligibility criterion that is similar in geographic scope and practical impact to the "within service territory [+ for SDG&E]" criterion in place for the IOUs.

b) The CEC could establish an explicit criterion that is connected to IOU areas, thereby creating equivalency to the geographic area from which the IOUs can source. For example, the "reasonable proximity" criteria may state that for any POU a resource must be both within California and within the service territory of the closest IOU to the POU – allowing a proximity limit similar to that enjoyed by SCE and PG&E customers.

c) The CEC could establish an explicit mileage criterion that establishes closer equivalency to the geographic area from which the IOUs can source. For example, the "reasonable proximity" criteria may state that for any POU a resource must be sourced from within an area of 10,000 square miles including and surrounding a POU's service territory.

d) The CEC could establish a "surrounding territory" criterion that adds significant geographic diversity for most (if not all) POUs. For

[1] SMUD's service territory is roughly 900 square miles.

example, the “reasonable proximity” criterion may be that resources must be located within the POU service territory and within any county that is contiguous to a county in which a POU has customers.

4) **Meaning of “to the extent possible”**: The Proposed Amendments are also too strict in interpreting the phrase “… to the extent possible …” in SB 350. The phrase implies that that there may be times when it is not possible to cost-effectively procure resources that meet the “reasonable proximity” criterion (however that is established) and still keep a viable voluntarily procured renewable program. For example, if the “reasonable proximity” limit means that the only resources available are extremely expensive, then that cost can act as a limit to program participation that makes any source geographic area allowed very restrictive. The Proposed Amendments should be altered to give a constructive meaning to this statutory language, by allowing procurement from resources outside the “reasonable proximity” area. The Proposed Amendments could simply establish a process whereby a POU Governing Board may demonstrate in a public process that resources within the “reasonable proximity” area are too expensive or too limited in resource potential, thereby allowing procurement outside of the restriction. This is a reasonable interpretation of “… to the extent possible …”

A. Clarification of 65% Long-Term Procurement Requirement

SMUD agrees with CMUA that the CEC should interpret the 65% long term procurement requirement in SB 350 carefully in order to provide needed flexibility and avoid unwarranted complications and potential compliance issues. For SMUD, the primary concern here is the interaction of the 65% requirement (SB 350 applies the requirement explicitly to procurement a retail seller “… counts toward … “the RPS for a compliance period) with historic carryover (HCO) and excess procurement.

HCO represents the surplus RECs as calculated by the CEC from procurement prior to the first compliance period under SBX1 2, and is arguably independent from the short versus long term contract question. SMUD expects that most HCO has already been applied to the first, 2011-2013, compliance period, or will be applied to the second, 2014-2016, compliance period. Hence, there may be relatively little interaction between HCO and the 65% requirement, which begins at the earliest in 2017. However, to the extent that any HCO remains to be applied in 2017 or later, SMUD suggests strongly that it be considered “long-term procurement” for the purposes of the 65% requirement. To do otherwise could lead to unnecessary and complicated – perhaps impossible -- attempts to “attribute” the applied HCO into short-term and long-term components.

For excess procurement, SMUD suggests strongly that any excess procurement from the current 2014-2016 compliance period also be considered “long-term” procurement for purposes of calculating the 65% obligation. Since procurement from short-term contracts in the current compliance period cannot be included in excess procurement, it follows that any excess procurement that is transferred into the next compliance period starting in 2017 comes from long-term contracts. After 2020, the CEC could engage in a case by case evaluation of how excess procurement interacts with the long-term

contracting requirement in only those cases where the requirement is not clearly met without considering the excess procurement. For example, if there were 100 GWh of excess procurement applied in a compliance period that has a 1000 GWh obligation, and 650 GWh or more of the remaining procurement applied is from long-term contracts, there would be no need to address the treatment of the excess procurement. If that constraint is not met, it would certainly be inappropriate for the CEC to consider excess procurement as "short-term" for purposes of the calculation so some case-by-case examination seems appropriate.

B. Clarification of Excess Procurement Calculation

SMUD suggests that the CEC add clarification about how the optional excess procurement calculation is to be structured for entities that meet the 65% long-term procurement requirement. Arguably, meeting the requirement in a compliance period should allow the new excess procurement procedures, with no subtraction of short-term contract procurement, in the following compliance period. For example, a POU that demonstrates more than 65% long-term procurement in the 2014-2016 compliance period should be allowed to use the new excess procurement provisions in the 2017-2020 compliance period. With more that 65% long-term procurement in that compliance period, the POU should be able to continue using the new excess procurement provisions in the subsequent compliance period, and so on.

This treatment provides up-front certainty for POUs considering whether they can use short-term contracts for a compliance period, along with the incentive to continue meeting the 65% requirement so that contracting option can continue going forward. If the 65% requirement is not met in a compliance period for some reason, then the short-term contracting provisions would not be allowed in the subsequent compliance period, but any short-term contracts entered into in good-faith in the current compliance period would not be retroactively challenged. POUs must know with certainty going into a compliance period what excess procurement rules will apply in order to most cost-effectively meet the RPS requirements.

C. Clarification of Amendments to PCC0 Contracts

SMUD has previously commented that the Enforcement Procedures should clarify when (and in what amounts) procurement that is classified as PCC0 is reclassified into one of PCC1 or PCC2 categories (see SMUD comments, July 21, 2015). SMUD is currently conferring with the CEC on just such a clarification for a specific resource – evidence that the current language in Section 3202(a)(2)(B) is not yet as clear as possible. SMUD requests CEC consideration of additional clarification at this time, even though no changes are currently contemplated as part of the Proposed Amendments.

The concept of grandfathered or "count in full" (now known as PCC0) procurement in SBX1 2 was that early contracts signed in good faith would remain eligible regardless of the new category requirements, and that these contracts would decrease over time as they end or are amended. The language for grandfathered contracts in Section 3202(a)(2)(B) states:

"3202(a)(2)(B)If contract amendments or modifications after June 1, 2010, increase nameplate capacity or expected quantities of annual generation, increase the term of the contract except as provided in 3202 (a)(2)(C), or substitute a different eligible renewable energy resource, only the MWhs or resources procured prior to June 1, 2010, shall count in full toward the RPS procurement targets. The remaining procurement must be classified into a portfolio content category and follow the portfolio balance requirements in accordance with section 3204 (c)."

- SMUD suggested in our July 15, 2015 comments that it is unclear what "… procured prior to June 1, 2010…" means (is it the contract date, or the actual energy procured, that is relevant?), as well as "… remaining procurement…" (does "remaining" refer to contract terms, or energy produced?). These phrases are clearly related to each other, and must be interpreted carefully since this is an important area of procurement as contracts are amended.

SMUD suggests that the best interpretation here is that energy procured under the terms in place prior to June 1, 2010 is grandfathered until the amended terms take effect, after which ***all*** energy delivered under the amended contract is moved to a procurement category. This interpretation would give greater effect to legislative intent that unclassified procurement should decline over time as these contracts end or are amended. It also best represents the intent of the contracting and amending parties. And finally, and perhaps most importantly, it promotes simplicity, leading to less need for case-by-case discussion, clarification, and interpretation. SMUD's proposed amendments to implement this concept are:

"3202(a)(2)(B): If contract amendments or modifications after June 1, 2010, increase nameplate capacity or expected quantities of annual generation, increase the term of the contract except as provided in 3202 (a)(2)(C), or substitute a different eligible renewable energy resource, ~~only~~all of the MWhs or resources procured after the terms of the amended contract take effect ~~prior to June 1, 2010, shall count in full toward the RPS procurement targets. The remaining procurement~~ must be classified into a portfolio content category and follow the portfolio balance requirements in accordance with section 3204 (c)."

This language makes it clear that, on the date that a qualifying amendment becomes effective, ***all remaining procurement*** is moved into a portfolio content category status. This is a clean and simple interpretation, consistent with the law, which avoids complications such as parsing the procurement from a contract into different categories and tracking a given quantity generated in the extended term, or from an increase in the nameplate capacity, or even from a new source. For ongoing procurement, a point of time is established in which the procurement simply changes categories. As time passes, more and more of the grandfathered, "count in full" contracts will likely be subject to amendments that subject that procurement to the PCC requirements, and it is critically important to have clarity about how these potential amendments will affect a POU's RPS compliance in this regard.

D. Procurement after the End of Compliance Periods

SMUD has previously commented that the Enforcement Procedures should allow more procurement flexibility around the end of a compliance period (see SMUD July 30, 2014 comments). SMUD again recommends that the CEC consider changes in Section 3202 with respect to the restrictions on procurement of RECs for a prior compliance period. Section 3202(e) states that a POU cannot "procure" RECs for a compliance period, though generated in that compliance period, if that procurement occurs after the end of the compliance period. There appears to be no legal requirement preventing such procurement, nor is there any policy reason to prohibit a POU from purchasing additional RECs of the vintage of the compliance period.

In general, a POU does not know with certainty the final RPS obligation in a compliance period, nor the final amount of procurement it has toward that obligation, until several months after the end of the compliance period (neither retail sales nor the amount of RECs procured is known on December 31st at the end year of a compliance period). In practice, confirmation of verified procurement toward an obligation can be years after the end of the procurement period, since the CEC verification of procurement to achieve compliance with RPS requirements lags significantly (it has been nearly 3 years since the end of the first compliance period, and POU procurement, including historical carryover verification, is not yet final).

The CEC should include flexibility for a POU to take stock of its compliance status with more complete information – a few months after the end of a compliance period or even later. Allowing "catch-up" procurement prior to the POU compliance report deadline, or even prior to final CEC verification of POU compliance, should be open to consideration. While such procurement may imply purchasing "unbundled" RECs, that kind of procurement is allowed up to the limits established in RPS law, and the CEC should not unnecessarily limit that procurement. Keeping the current overly restrictive language runs the risk of both the CEC and POUs expending resources on "appeals" of a determination of resource ineligibility and a consequent non-compliance status long after the end of the compliance period.

E. Treatment of Distributed Generation

SMUD has frequently commented that the CEC should revise the treatment of distributed generation as PCC3 generation, or unbundled REC procurement as it has been interpreted. Without reiterating these arguments in detail here, SMUD points out that the passage of SB 350 makes this treatment more problematic over time.

SB 350 expands the RPS from 33% renewables by 2020 to 50% renewables by 2030, an expansion of over 50% from the previous requirement, while maintaining the restriction that only 10% of procurement can come from unbundled RECs after 2020. Behind the meter distributed generation meets all the requirements of a PCC1 resource, particularly because it is *in state*, but is considered by the CEC and the CPUC as a PCC3 resource. With the higher renewable requirement in SB 350 (as implemented in the Proposed Amendments), there is an increasing danger that a POU will reject procurement of behind the meter distributed generation that is fully within California, and

has extensive reliability and local economic benefits, because previous procurement of similar resources has already exceeded the PCC3 limit in place. Surely the CEC should be concerned about this ongoing barrier to distributed generation procurement, as that is procurement favored by state policy, including Governor Brown's distributed generation goals and the state's loading order.

Thank you again for the opportunity to comment. SMUD also supports the comments of the California Municipal Utilities Association.

/s/

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