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**SMUD Comments on the Implementation Proposal for Power Source Disclosure**

*Additional submitted attachment is included below.*

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

<b>In the matter of:</b>	)	Docket No. 16-OIR-05
	)	
<b>AB 1110 Implementation Rulemaking</b>	)	SMUD Comments on Staff July 14 <sup>th</sup>
	)	Workshop – AB 1110
	)	Implementation Rulemaking
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	)	August 15, 2017
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**Comments of the Sacramento Municipal Utility District  
on the Implementation Proposal for Power Source Disclosure**

The Sacramento Municipal Utility District (“SMUD”) respectfully submits the following comments to the California Energy Commission (“Commission”) regarding the Draft Staff Paper entitled “*Assembly Bill 1110 Implementation Proposal for Power Source Disclosure*” (Proposal).

The fundamental goal of the Power Source Disclosure (PSD) program is to provide information to consumers about the power they consume in an easy to grasp, simple format. The changes to the PSD requirements pursuant to Assembly Bill 1110 (AB 1110) should serve to enhance consumer understanding of their electricity products (power mixes) and the related carbon footprint of the power they procure and consume, without causing consumer confusion. SMUD’s previous comments on AB 1110 implementation from February 2017 suggested that the CEC staff should account for the complexity of reporting on the power source to consumers who do not follow electricity markets, particularly in a changing world with both bundled and unbundled RECs and arcane (to consumers) schemes to attribute GHG emissions from various kinds of procurement.

Unfortunately, the Commission staff’s Proposal for implementation of AB 1110 contains many provisions that will cause or increase consumer confusion by dramatically altering how load serving entities describe their electricity products to their consumers. SMUD opposes these provisions. In particular, SMUD believes that the Proposal errs as described below:

- The proposed treatment of unbundled Renewable Energy Credits (RECs) for purposes of calculating and presenting a product’s “power mix” in the Power Content Label (PCL). The renewable generation underlying the unbundled REC should be included in the power mix, contrary to the proposed treatment.

- The proposed treatment of unbundled RECs for purposes of calculating and presenting a product’s greenhouse gas (GHG) intensity in the Power Content Label (PCL). Again, the zero-GHG attribute of the renewable generation underlying the unbundled REC should be reflected in the consumer-facing PCL, contrary to the proposed treatment.
- The proposed treatment of “firmed and shaped” contracts involving the importing of “substitute power” associated with procurement of renewable generation outside of California. The underlying renewable procurement should be reflected in the consumer-facing GHG intensity in the PCL, consistent with the proposed reflection of that power in the power mix portion of the paper.
- The proposed treatment of “null power” suggesting that power from which the RECs have been separated should be treated in the GHG intensity calculation as still having GHG emissions consistent with the underlying renewable energy. This treatment runs the risk of considerable double-counting of zero-GHG resources in the PCL. In addition, there is risk that the procurer of the bundled energy and RECs, prior to the RECs being separated, will be required to present confusing information to their consumers about the GHG intensity of their power.

SMUD expands on these points and discusses other issues in the sections below.

***A. Unbundled RECs Should Be Categorized in the PCL as Eligible Renewable Power.***

SMUD strongly disagrees with the exclusion of REC only or unbundled REC transactions from the PSD power mix percentage calculations. This is particularly problematic for SMUD’s green pricing program (Greenergy), which includes procurement of significant amounts of unbundled solar, wind and other renewable RECs, and includes those renewable resources in the Greenergy PCL. It remains the law in the state that RECs, even when unbundled, “include all of the renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource.”<sup>1</sup> The underlying energy when a REC is unbundled and sold separately is “null power,” and the fuel-type attribute remains associated with the REC.

SMUD notes that various departments of the State of California, including the CEC, participate in SMUD’s Greenergy program with the intention of reducing their carbon footprint by procuring renewable energy. Those good intentions are undermined by the Proposal’s treatment of unbundled RECs. Unbundled RECs are a viable, accepted, eligible renewable energy product in California and elsewhere, representing real support for zero-emission renewable generation. However, it is likely that these state agencies would be a lot less interested in Greenergy if they were misinformed by the Commission that their Greenergy dollars did not go to renewable energy or zero-carbon electricity.

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<sup>1</sup> Pub. Util. Code § 399.12(h)(2).

AB 1110 provides the CEC with substantial discretion about how to incorporate unbundled RECs in the PCL. The law does not designate a particular path but merely states that the CEC shall determine a format to include "... the portion of annual sales derived from unbundled renewable energy credits..."<sup>2</sup> in disclosures (such as the PCL). The law does not direct the CEC to remove unbundled RECs from the power mix – the CEC is instead directed to figure out how they should be included. SMUD believes that consumers have the right to know that their money went to choose renewable energy, without being confused and misled by a PCL that suggests their procurement does not support renewable generation.

Nevertheless, SMUD agrees that AB 1110 requires the Commission to identify unbundled RECs in some fashion in the PCL. SMUD recommends that the Commission adopt a version of the footnote treatment recommended in our previous comments:

"xx percent of this product is from "Unbundled REC" procurement, meaning that it comes from buying the renewable nature of the source through a certificate of authenticity, without purchasing the actual electricity from the source. Unbundled RECs reflect actual electricity that has been generated from a renewable source and provided to the electricity grid that serves California."

Assembly Member Ting's letter to the Journal on August 28, 2016, supports SMUD's contention that the "attributes" of renewable generation, as represented by unbundled RECs according to California law and longstanding regulatory policy, should be a significant consideration as the Commission determines how to include unbundled RECs. That letter states the author's intent that AB 1110 requires the Commission to ensure that "... there is no double counting of the GHG emissions, **or emission attributes**, associated with any unit of electricity production in the West ...." California law defines a REC, unbundled or bundled, as including "... all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource..."<sup>3</sup> If the Commission does not adopt inclusion of the renewable nature of the underlying procurement in the PCL, it is at best undercounting and at worst allowing double counting of the "renewableness" of this procurement in the PCL and other disclosures in the West. If the REC procuring entity does not have the right to explicitly claim the renewable nature of their procurement, or only has a muddled right through an obscure footnote, what is to prevent the null energy left behind from being described in some other disclosure as renewable?

The Commission's proposed treatment of unbundled RECs for the power mix portion of the PCL implies a departure in the definition of a REC and how the renewable attributes have been historically counted, pursuant to California law. Moreover, excluding unbundled RECs from the power mix calculations is in complete opposition to how they

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<sup>2</sup> See PUC 398.4(h)(7).

<sup>3</sup> See PUC 399.12(h)(2).

are treated nationally under the predominant Green-e standard that certifies and verifies voluntary green pricing programs and voluntary corporate renewable procurement actions. SMUD supports and recommends that the CEC pay close attention to the comments of the Center for Resource Solutions (CRS) regarding unbundled REC procurement treatment. In addition, the Commission's proposed treatment runs afoul of Federal Trade Commission (FTC) guidelines on corporate claims about using renewable energy.<sup>4</sup> There is no rational reason for the Commission to adopt an interpretation of AB 1110 that treats marketing claims for reporting utilities under the PCL differently than federal guidelines for private sector claims of green energy procurement.

The Proposal erroneously states on page 14 that unbundled REC purchases "... have no underlying electricity." In fact, a REC cannot be established, or procured, without underlying renewable generation. That a REC can be separated from the underlying generation is nothing new and should not devalue the importance of that generation. California law provides that a REC that is separated in some fashion, or "unbundled," still conveys the full renewable attributes of the underlying energy to the procuring entity and its customers (unbundled RECs would have no market purpose or value without this critical component). Most, if not all, electricity products are tracked in the Western Renewable Energy Generation Information System (WREGIS), which exists to prevent double counting of renewable generation and attributes throughout the West. WREGIS requires not just information about the procurement of RECs (bundled and unbundled), but also the verifying meter information about the underlying renewable generation. When a program such as Greenergy procures an unbundled REC, the underlying renewable generation must be documented and associated with the REC in WREGIS. Absent that verification, the Green-e standard will not certify the procurement as renewable.

The proposal for the treatment of unbundled RECs is not only problematic for voluntary renewable programs such as Greenergy, but also for Renewable Portfolio Standard (RPS) procurement that every retail supplier in California must include in their electricity products. RPS law allows a significant percentage of this renewable procurement to be comprised of unbundled RECs. SMUD has previously suggested that the PCL cannot be made fully consistent with the RPS due to banking and compliance period aspects, but that there should be maximum consistency with the RPS on a resource eligibility basis. The Commission's proposed treatment of unbundled RECs is not consistent with this principle, as it would force retail suppliers to suggest to their customers that some of the renewable electricity they buy, while fully eligible to meet the RPS requirements, is somehow less "renewable" than other eligible renewable products. This policy is counter-productive to maintaining consumer support for higher and higher targets of the RPS.

In SMUD's case, this is particularly problematic with respect to our procurement of the RECs from distributed solar photovoltaic generation installed by our customers. SMUD

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<sup>4</sup> 16 C.F.R. § 260.15.

has purchased the RECs from most of these customer installations and includes, where feasible, these RECs in our RPS procurement, certifying both individual and aggregated RPS facilities with the Commission and registering and tracking that generation in WREGIS. However, the Commission considers this local generation and procurement as comprising product content category 3 (PCC3) or unbundled REC procurement. SMUD should not be forced to provide our customers the nonsensical information that renewable generation created locally, from PV panels on their own homes and businesses, is not equivalent to other, more remote, renewable procurement.

***B. Unbundled RECs Should Be Categorized in the PCL as Conveying Zero-GHG Emissions.***

SMUD also strongly opposes the Commission staff recommendation in the proposal that unbundled RECs should not be included as representing zero-GHG procurement in the GHG intensity factor portion of the PCL. This proposal would result in a discontinuity between what SMUD is promising to and purchasing for customers (at a premium) and what the PCL would represent or show to them about the product. Under the proposal, a PCL could misinform customers who are paying a premium for acquiring a 100% renewable energy product that their power mix is 100% fossil power with commensurate GHG emissions. This can only lead customers of green pricing programs to question their procurement choices and thereby undermine the voluntary green pricing marketplace.

The CEC's proposal also seems contradictory to letter to the *Assembly Journal* by AB 1110's author (Assembly Member Phil Ting), in which he states, "... requires the CEC to ensure that there is no double counting of GHG emissions, or **emissions attributes**, associated with any unit of electricity production in the West ...." The author specifically adds "emissions attributes" in addition to emissions which leads SMUD to believe that his intent was to include the benefits associated with a REC's emissions attributes.

SMUD contends that it is unnecessary and counterproductive to establish a wooden consistency between the consumer-facing information developed for the PCL and compliance reporting under the source-based Mandatory Reporting Regulation (MRR) and Cap and Trade (Cap & Trade) Regulation at the California Air Resources Board (CARB). AB 1110 requires the Commission to "...rely on the most recent verified greenhouse gas emissions data ...."<sup>5</sup> This refers to the MRR data, which is source-based (or first-provider based for imports), and it is reasonable for the Commission to be consistent with the State's primary source of GHG data for sources – *when calculating source-based intensity factors*. In fact, this provision of law specifies that the reliance on MRR data is for developing "...greenhouse gas emissions intensity factors for electricity from specified and unspecified sources ...," not for electricity products.

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<sup>5</sup> See 398.4(k)(2)(C).

AB 1110 does not require the Commission to develop a GHG intensity for electricity products that strictly conforms to practices in the MRR and Cap & Trade structure. The law merely requires that when developing the methodology for establishing GHG intensities of electricity products, the Commission consult "... with the State Air Resources Board ...."<sup>6</sup> Developing and providing consumer-facing information about the GHG intensity of an electricity product must account for multiple sources and uses of power (wholesale, retail, etc.) under a variety of procurement mechanisms, in addition to the verified emissions from each source. Simple reliance on source-based emission reporting only, without considering the complexity of electricity procurement in general, and particularly with California's complicated RPS structure, will lead to an electricity product intensity calculation that is confusing to consumers and that causes market disruption.

Assembly Member Ting's letter to the *Journal* reaffirms that the Commission has discretion in developing electricity product GHG intensities. It states that the bill "... does not require the use of a specific methodology, or data source for developing emissions intensity ...." The letter goes on to indicate the author's intent that "... the CEC's approach should be consistent, *to the extent practicable*, with the approach taken by ARB ...." (*Emphasis added.*) When determining what is "practicable" here, the Commission must consider the differences between a source-based compliance reporting structure (at CARB) and the consumer-facing, procurement-based structure to be developed for the PCL.

Rather than trying to shoehorn the consumer-facing, procurement-oriented PCL to consistency with CARB's source-oriented MRR or Cap & Trade structures, the Commission should strive to make the power mix portion of the PCL consistent with the renewable eligibility requirements of the consumer-facing, procurement-oriented RPS, and strive to make the GHG portion of the PCL consistent internally with the power mix portion. Retail suppliers should be able to list the eligible renewable procurement for the RPS, bundled or unbundled, within the renewable fuel types established in the PCL. Retail suppliers should then be able to show GHG intensity in the PCL *consistent with that renewable procurement*.

As CRS has eloquently written in their comments on this issue, a REC (unbundled or bundled) carries with it all the attributes of the renewable generation. This does not and need not change how RECs are treated under California's Cap & Trade program -- RECs are not equivalent to allowances or offsets under that program. An allowance is an instrument that "covers" a ton of GHG emissions for compliance purposes. An offset represents an amount of GHG reduction outside the Cap & Trade program that can also be used to "cover" a ton of GHG emissions (up to the stated limit). A REC, on the other hand, simply carries the zero-GHG attribute of the underlying renewable generation. When an entity procures renewables, that procurement is tracked via RECs (in WREGIS), and the entity has a legal right to claim that it has procured power with renewable GHG emissions, usually a rate of zero tons/MWh. The REC then cannot

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<sup>6</sup> See 398.4(k)(2)(A).



represent an amount of GHG emissions (like an allowance) or an amount of GHG reduction (like an offset), it merely says this particular associated MWh has zero (or low) GHG emissions associated with it. The CEC can treat RECs differently for purposes of the PSD program without concern that this will interfere with or contradict the Cap & Trade or MRR structures.

It is important to consider how renewable generation and procurement affects GHG in California, under the Cap & Trade system. Generation of renewable energy, anywhere in the Western Interconnection, nearly always causes a decrease of GHG from fossil plants that are turned down or off. If those fossil plants are within California, the in-state GHG emissions associated with the electricity sector will decrease, but this simply allows GHG emissions to increase in some other sector under the Cap. If the renewable generation is located within California, or is directly imported into the state, it is more likely that electric sector fossil emissions will decrease within the state,<sup>7</sup> but again this likely has no impact on overall GHG emissions under the Cap. The entity that procures this renewable generation cannot claim an overall reduction of GHG but can claim *less responsibility* for GHG emitted because of their renewable procurement.

The point here is that the GHG intensity calculated for the PCL should reflect the claim of responsibility for GHG emissions from one's procurement. If a retail supplier procures renewable generation and tracks that procurement by their holding (and at some point retiring) RECs – bundled or unbundled, it has the right to claim the zero-GHG signature of the underlying renewables.

***C. Firmed and Shaped Contracts Should be Reflected Consistently -- as Renewable in the Power Mix Portion of the PCL and with Commensurate (mostly zero) GHG emissions in the Emission Intensity Portion.***

SMUD strongly disagrees with the CEC's position regarding the treatment of firmed and shaped contracts for the GHG emissions calculation. The Commission should strive for consistency between the two parts of the PCL to avoid consumer confusion and market disruption. Firmed and shaped contracts are eligible for RPS compliance, and when this procurement is included as eligible renewables on the power mix portion of the PCL, the Commission should also show the zero-GHG nature of the procurement in the GHG intensity portion. Consumer confusion will arise if there is a PCL that shows 100% eligible renewable generation procured through firmed and shaped contracts but also shows a 100% fossil GHG signature. Requiring such a discrepancy in the PCL may disrupt the market for firmed and shaped contracts and increase costs of compliance in the RPS program at a time when renewable procurement is set to accelerate again.

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<sup>7</sup> Note that due to the interconnected nature of the grid, generation of renewables within California may actually result, at least in part, in decreased GHG emissions from fossil resources outside the state and outside the Cap & Trade system. SMUD is not aware of any accurate way to track how or where displacement occurs on the grid when a renewable power plant generates.

The proposed treatment here is inconsistent with ARB's Cap & Trade program, which allows an "RPS Adjustment" to reduce a procuring entity's Cap & Trade compliance obligation for firm and shaped contracts (under certain conditions). The ARB is essentially saying that, for this type of procurement, the procuring entity's GHG responsibility for compliance is linked to the originating renewable power and not the firming fossil power. This is an instance where it is "practicable" to be consistent with the Cap & Trade program rather than the MRR program at CARB. Assembly Member Ting's letter to the *Journal* indicates the author's intent for consistency with ARB's Cap & Trade program as well as MRR, and explicitly acknowledges that the Cap & Trade program allows "... specific adjustment to compliance obligations," which includes the RPS Adjustment. The author's stated intent, and recognition of adjustments allowed within these programs, lends itself to application of a similar adjustment to the GHG intensity calculation for firm and shaped contracts, as provided under the Cap & Trade program with the RPS adjustment.

***D. Null Power Should Not Be Reflected in the PCL as Having Zero-GHG Emissions to Avoid Potential Double Counting.***

SMUD believes that the proposed treatment of "null power" by Commission Staff must be rethought. The CEC's proposal would result in significantly higher GHG emissions than SMUD believes are truly attributable to the energy provided to our customers. SMUD procures renewables that are either located in the CAISO, or delivered to a California balancing authority but are not delivered to SMUD's territory. This procurement qualifies as PCC1 (or PCC0) under the RPS because SMUD procures the bundled energy and RECs and has that energy delivered to a California balancing authority. However, SMUD separates the RECs from the power at this point, and sells the resulting "null power" as wholesale power in the CAISO market. SMUD believes, though it is not abundantly clear, that the Proposal would allow SMUD to reflect the zero-GHG nature of the PCC1 renewable procurement in the GHG intensity portion of the PCL, consistent with the treatment as eligible renewable power in the power mix portion. However, the proposal also suggests that the "null power" procured by some other market entity for a different electricity product should be reflected in the GHG intensity of that product as zero-GHG. This appears to constitute double counting of the zero-GHG attribute of the underlying renewables.

To avoid the apparent double counting, SMUD recommends that "null power" be treated as having emissions similar to unspecified sources, using the appropriate default emissions factor. Application of the zero-GHG benefit to "null power" shifts the benefits of procuring renewables from those that are paying the premium for that clean power to other entities that are simply paying "market price" for the energy. This shift is inconsistent with California policies.

SMUD would be strongly opposed to an alternative treatment where the null power continues to enjoy the zero-GHG attribute, while SMUD's eligible PCC1 procurement is not allowed to reflect that zero-GHG signature. Under that "solution," SMUD's intensity factor would see no GHG benefits from PCC 1 resources delivered to California. SMUD

customers are paying a premium to receive the benefits associated with these renewables, including the zero-GHG nature of the renewable power. Excluding those benefits from the PCL is unfair and provides an inaccurate representation that will result in customer confusion. For SMUD, excluding the GHG benefits from these sources in the PCL results in a 25-30% higher intensity factor in 2017, and this discrepancy between the intensity that our customers expect from their procurement and what is shown on the PCL is likely to grow over time, exacerbating confusion and potentially leading to less support for SMUD's renewable procurement practices.

### ***E. Other Issues***

**Timing of PSD and PCL proposed deadlines:** The CEC requested comments regarding the feasibility of proposed deadlines for submissions under the PSD/PCL program. The proposal for submission of the PSD appears to be in line with current deadlines (June 1), but the requirements for providing the PCL to customers seems problematic. For SMUD, the issues arise from the fact the CEC has historically made the PCL template available in the latter part of August or September, and SMUD (and the other utilities) cannot prepare the actual label until this point. SMUD asks that the CEC provide additional information regarding the expected timing for availability of the PCL template, so we can more appropriately comment on this request. The CEC's audit protocols for the PSD/PCL necessitate sufficient time after the template is available to comply with the audit protocols, before distributing the label to customers.

**Prorating "excess generation" to ALL generation categories:** SMUD finds that prorating "excess generation" relative to retail sales to ALL generation categories is inappropriate and based on a misunderstanding of what the amount of "excess" in Schedule 1 represents (Total Net Purchases vs. Total Retail Sales). CEC staff implied that this difference represented transmission losses (see our comments on this issue above/below), but that is not the case – it includes the over-procurement necessary to address renewables physically delivered into a California balancing authority, but not delivered to SMUD's load. Prorating this difference to ALL generation categories unfairly diminishes the quantity of renewables procured for our customers (a premium they are paying for), and misrepresents to our customers the actual renewables we have procured on their behalf. SMUD does not "sell" our renewables (attributes) to market and therefore should not decrease the amount portrayed in our power mix (except in instances where both are explicitly sold, as SMUD did in 2016 with some of our Solano wind energy).

The application of this proration to ONLY non-renewable categories was specifically done to recognize the fact that the utilities would not be selling the renewables they procured on behalf of their customers (at a premium) unless it was done under a specified contract. In the spirit of this original intent, SMUD requests that the CEC also exclude large hydro from the proration formula. In SMUD's case, as a low cost source that is delivered to the SMUD territory, we do not sell our large hydro resources. Applying the proration formula to our large hydro can significantly distort the percentage of large hydro presented in the PCL to our customers. For 2016, applying this formula

to SMUD's large hydro would drop the large hydro percentage by more than 4 percentage points – a significant difference, especially as California moves towards a lower “carbon world.”

Additionally, applying the proration formula to renewables categories in the PCL deviates from long standing PSD policy, and is again inconsistent with the author's intent expressed in the letter to the Assembly Journal.

**“Private Contracts” Included in Default Label:** SMUD supports the CEC's proposal to not create a separate label for “private” green pricing contracts, or contracts that may be provided to just one (or a handful) of customers, but is not available as a general green pricing electricity product. However, procurement for these custom products is part of overall annual retail sales. SMUD suggests that the CEC consider allowing flexibility about how these resources and load are reflected in the overall PSD and PCL structure. For example, the generation and sales for these products may be reflected in the general PCL for our Greenenergy Program, or in our default PCL for general customers, or perhaps left out of the PCL structure altogether.

**CARB's Voluntary Renewable Energy Program:** SMUD believes that the Commission may need to reflect the GHG reductions that occur through CARB's voluntary renewable energy (VRE) program in the GHG intensity calculation for certain products. The VRE program assures our customers who participate in a voluntary program like Greenenergy that GHG emission reductions are associated with their voluntary action. The VRE program retires allowances under the cap commensurate with renewable generation within capped jurisdictions, so should impact the GHG intensity calculation in the PCL in some circumstances.

SMUD again appreciates the opportunity to provide comments regarding the Proposal, and looks forward to continued discussion with Commission staff as the AB 1110 implementation proceeds.

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