

**DOCKETED**

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**SMUD Comments Re Enforcement Procedures for the Renewables Portfolio Standard**

SMUD Comments Re Enforcement Procedures for the Renewables Portfolio Standard

*Additional submitted attachment is included below.*

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

<b>In the matter of:</b>	)	Docket No. 16-RPS-03
	)	
<b>Amendments to Regulations</b>	)	SMUD Comments Re:
<b>Specifying Enforcement Procedures</b>	)	September 10, 2019 Workshop on
<b>for the Renewables Portfolio Standard</b>	)	Enforcement Procedures for the
<b>for Local Publicly Owned Electric</b>	)	Renewables Portfolio Standard for
<b>Utilities</b>	)	Local Publicly Owned Electric
	)	Utilities

October 1, 2019

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**Comments of SACRAMENTO MUNICIPAL UTILITIES DISTRICT on  
Renewables Portfolio Standard Long-Term Procurement Requirement for  
Local Publicly Owned Electric Utilities**

The Sacramento Municipal Utility District (SMUD) respectfully submits these comments to the California Energy Commission (CEC) on potential revisions to the CEC's *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* to implement the new long-term procurement requirement enacted by Senate Bill (SB) 350 (2015). SMUD appreciated the clear language and structure of the Staff Paper: *Implementation Proposal for Renewables Portfolio Standard Long-Term Procurement Requirement for Local Publicly Owned Electric Utilities* (LTR White Paper). SMUD supports most of the provisions in the LTR White Paper, and herein provides comments on the options presented plus answers to questions asked in the LTR White Paper.

The Long-Term Procurement Requirement (LTR) is an important new provision in the Renewable Portfolio Standard (RPS) program, one of several enacted by SB 350 in 2015. In general, Publicly Owned Electric Utilities (POUs) will strive to sign long-term contracts to meet their renewable procurement obligations, as longer-term contracts provide for: 1) a degree of procurement certainty for the POU; 2) better financing for construction of the resource; and, 3) lower overall renewable prices – a win for both the renewable generator and the POU.

However, it is important for POUs to retain as much flexibility as possible in their RPS procurement obligations in order to achieve the RPS in a cost-effective manner. Contracts can fail, generators can go off-line with operational problems, and factors that affect the RPS obligation (load, ancillary programs) can vary significantly. In these circumstances, a POU may need to rely on securing a replacement long-term contract or owned resource and contracting and development timeframes can be a barrier. It may be particularly difficult for a POU to make up for an unexpected shortfall if the shortfall occurs near the end of a compliance period.

## TOPIC 1: IMPLEMENTATION OF THE LONG-TERM PROCUREMENT REQUIREMENT

### **The CEC should implement the LTR as a separate, independent compliance obligation.**

As the LTR White Paper acknowledges, the new LTR adds a new compliance obligation to the three pre-existing requirements of the RPS: 1) to procure renewable generation at or above the appropriate overall target, 2) to procure enough Portfolio Content Category (PCC) 1 generation to meet the required portfolio balance requirement (PBR), and 3) to procure no more than the maximum allowed PCC3 products.<sup>1</sup> Meeting the new LTR is connected to the pre-existing RPS requirements in that starting in 2021 (and if applicable starting in 2017) a POU meeting the LTR can revise how excess procurement is handled in relation to the RPS target.

SMUD supports the concept in the LTR White Paper that the quantity of procurement needed to satisfy the LTR is 65% (or more) of the "... lesser of the RPS procurement target or the total procurement a POU applies to the procurement target." This interpretation effectively implements the LTR while preserving some POU procurement flexibility.

The LTR White Paper presents two options for the basic implementation of the LTR: 1) the "independent" option (Option 1), in which the LTR presents a separate, independent compliance obligation, and 2) the "dependent" option (Option 2), in which the CEC forces compliance with the LTR by disallowing short-term procurement from a POU's RPS totals until the LTR is met. SMUD strongly supports Option 1 -- the independent implementation, in which LTR compliance has no impact on POU compliance with the RPS procurement target and PBR. However, Option 1 should be implemented with full ability to use the "delay of timely compliance" provisions available in the current RPS structure. SMUD opposes Option 2 -- the dependent implementation, because it 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.

While SMUD supports Option 1, SMUD believes that the optional compliance measures provisions in Public Utilities Code (PUC) sections 399.15(b)(5) and (c) and section 399.16(e), as implemented for POU's through sections 399.30(c)(3) and (d)(2), should be fully available for meeting the LTR. The LTR White Paper states that the portion of these optional compliance measures that provide for delay of timely compliance for certain reasons (399.15(b)(5)) do not apply for the LTR because the language of that part of the law says they apply to "... this section...". The LTR White Paper interprets this language in a narrow legalistic fashion to apply **only** to the basic RPS procurement target requirements in section 399.15 and not to the LTR requirement found in section 399. The legislative intent does not support restricting the delay of timely compliance provisions only to the procurement targets, and SMUD urges the CEC to allow these optional compliance measures to also apply to the LTR. A better interpretation of "... this section ..." is that the term refers broadly to the overall RPS program in law as it is modified over time.

Note that section 399.13 is essentially about the details of required renewable energy procurement plans to meet the RPS requirements. These details include: examining needed

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transmission facilities, upgrades, or enhancements that are "... reasonably necessary to achieve the renewables portfolio standard procurement requirements ..." Inadequate transmission is one of the reasons for delay of timely compliance mentioned in 399.15(b)(5). Section 399.13 also 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 Section 399.15. Clearly, section 399.13 and section 399.15 are closely linked with respect to the question of delay of timely compliance.

It is also the case that the primary reasons why a POU may be unexpectedly short on long-term procurement are generally due to events outside their control, like the failure or delay of a project that is under development under a long-term contract or an existing long-term resource fails. 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. The CEC should not eliminate or limit optional compliance mechanisms that would otherwise provide reasonable protections for a POU's ratepayers.

**SMUD offers the following responses to the discussion questions presented in the Staff Paper:**

- 1. Do both implementation options effectively implement the long-term procurement requirement?** SMUD believes that the "independent" compliance Option 1 is far superior to the "dependent" compliance option, but as presented does not yet effectively implement the LTR. This is because, under staff's interpretation, the "independent" compliance option excludes the use of the delay of timely compliance mechanism. As discussed above, Staff's reading of the law is too narrow and is inconsistent with the clear purpose of the RPS rule.

The "dependent" compliance Option 2, as presented, is not an effective implementation of the LTR, because of the potential to disallow procurement entered into in good faith in order to force compliance with the LTR. The CEC should not be in the business of disallowing procurement and potentially thereby directly causing noncompliance with the RPS procurement targets or the PBR. If the "dependent" option can be implemented without the risk of forced noncompliance, SMUD is open to its consideration.

- 2. Which implementation option best supports the state's 100 percent clean energy policy?** While noting that we are discussing an RPS that is well below 100%, SMUD believes the "independent" option best supports the State's 100% clean energy goal in 2045. At 100% clean energy, the length of a procurement contract becomes somewhat irrelevant. However, as discussed above if clean energy procurement is "disallowed" by staff, the State's 100% clean energy goal may also be threatened along with underlying RPS compliance.
- 3. What reasons (e.g., policy, factual, financial, practical, legal) support the independent compliance LTR implementation for POUs?** An "independent" compliance structure is the preferred option because:

- a. It preserves local POU authority for procurement by counting all the eligible procurement a POU has submitted, rather than potentially excluding procurement in order to force LTR compliance (as in the proposed “dependent” option).
- b. It preserves local POU authority regarding compliance with the variety of RPS obligations, including the new LTR. Although SMUD does not expect to be non-compliant for any of the RPS obligations, the CEC should not be in the role of forcing compliance of RPS obligations through administrative action, particularly when that action involves disallowing legitimate procurement.
- c. It is a cleaner RPS structure, easier to implement and understand, as it treats all RPS obligations independently.

**4. What market impacts, if any, could result if the CEC implements the LTR for POU as the independent compliance option?** SMUD does not believe there are significant market impacts if the CEC implements the LTR for POU as the independent compliance option, even if there are slight implementation differences between the CEC’s POU implementation and the CPUC implementation of the LTR requirement for retail sellers. If the option is implemented as proposed, where the delay of timely compliance optional measure does not apply to the LTR, it is possible that future power purchase agreements could impose higher penalties for missing online dates, which may result in higher contract prices incurred on behalf of POU ratepayers.

**5. Are there alternative implementation options that are less burdensome and sufficiently effectuate the purpose of the statute?** SMUD supports an “independent” compliance implementation with the ability to apply all optional compliance measures, including the delay of timely compliance mechanism, whenever applicable.

## TOPIC 2: CHARACTERIZATION OF LONG-TERM PROCUREMENT

**The LTR should be implemented to retain flexibility for long-term planning and procurement.**

The LTR has been included in the RPS to support long-term *planning* and help new generation projects secure lower-cost *financing*. However, the LTR represents another constraint added to renewable procurement for the RPS. Unless implemented carefully, constraints tend to do nothing but reduce opportunities and raise costs. Since the market typically strongly favors long-term contracts in the first place, the CEC should implement the LTR with maximum flexibility needed for POU to secure a least-cost, best-fit plan for their ratepayers.

Most importantly, PCC0 RECs should fully count as a long-term resource and not be subtracted before the long-term procurement 65% ratio is applied. These resources were procured in good faith, many through long-term contracts and ownership agreements. If disallowed to contribute to the new LTR, PCC0 RECs can no longer be said to “count in full” as required by law. SMUD also supports the proposed treatment of PCC2 contracts, in which only the underlying renewable contract is relevant for the LTR requirement. This is consistent with the principle of maximum flexibility, allowing PCC2 contracts to be considered “long-term” if the underlying

renewable contract has a term of 10 years or more, regardless of the length of the substitute power contracts. Allowing flexibility in these substitute power contracts makes sense.

**SMUD offers the following responses to the discussion questions presented in the Staff Paper:**

- 1. For an amended contract to be considered long-term, staff proposes that the current term or at least one prior term have a continuous duration of at least 10 years. Can certain amendments to short-term contracts, in which the duration of the amendment is also short-term in nature, but the entire amended term has a duration of at least 10 years, provide long-term planning stability?** Under the CEC's proposed structure, a contract that is originally 10 years long could be extended for 1 year (or month, etc.) and still be considered "long-term." While a contract that is 9 years long originally and is extended for another 9 years would not. This is illogical. The law defines "long-term" as a contract of 10 years or longer, with the intent of fostering long-term planning. The CEC should adopt the most flexible application of this definition – whereby any contract that results in a term of 10 years or longer, originally or as amended, complies with the LTR.
- 2. What reasons (e.g., policy, factual, practical, financial, legal), if any, would support characterizing short-term amendments of short-term contracts as long-term, provided the entirety of the amended term is at least 10 years?** First, the law defines "long-term" as 10 years or more, without including any references to how contract amendments should be treated. Legally, any contract that as amended is greater than 10 years in length meets the definition set out in the law. Second, the renewables marketplace needs flexibility at the end of contracts to allow for the short-term extension of a contract that effectively turns a less-than-10-year contract into a greater-than-10-year contract. A procuring entity may need just a few more months or years from a current expiring contract before a new resource comes on line. A generator may need just a few more months or years under a contract before it is decommissioned or moves to another signed contract. Finally, a generator may need to match output to multiple contracting structures. For example, a generator may have secured a seven-year contract to provide 50% of its output, as well as a 10-year contract for the remaining 50%. Allowing the seven-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. However, with the CEC's proposed long-term contract definition, such a contract extension may not be feasible if the purchaser is seeking a long-term contract to meet the LTR. The CEC should allow as much contracting flexibility as possible under the law to ensure lowest cost compliance.
- 3. Should procurement from short-term assignments of contracts that were initially long-term in nature be allowed to count as long-term procurement when determining compliance with the LTR?** Yes, such contracts should be counted as long-term procurement for LTR compliance. Again, maximum flexibility under the law would allow the underlying "long-term-contract" attribute to transfer with a short-term assignment of a contract. Such transfers may be key to keeping long-term contracts in place and to meeting the new LTR.

4. **Should contract modifications that do not explicitly change the stated duration of the contract, such as changes to procurement quantities, changes in price, or assignment of certain rights or obligations under the contract, affect the contract's duration for purpose of determining the long-term nature of the procurement?** No, such contract modifications should not affect the contract's duration or otherwise be found pertinent for the purpose of LTR compliance. Amendments not affecting the terms' length should not affect the long-term nature of the contract. Nothing in SB 350 suggests that other contract terms are relevant to the LTR. The CEC should not introduce obstacles to RPS procurement. Capacity upgrades and similar contract changes should be encouraged, not discouraged.
5. **Under what circumstances should a POU's assignment of its rights and obligations under a long-term contract serve to nullify the long-term nature of the contract?** There is no reason to nullify the long-term nature of a contract when a POU assigns rights and obligations under the contract to another entity. Nothing in SB 350 suggests that long-term contracts cannot be assigned without threatening the status as a long-term contract. Treating the assigned contract as long-term for the remainder of the contract term would be consistent with the purpose of supporting project financing.
6. **Do both treatment options for PCC0 and historic carryover effectively implement both the LTR and the count-in-full provisions under PUC section 399.16?** It is essential that PCC0 resources keep their "count in full" status by wholly counting toward the long-term procurement requirement. To treat PCC0 contracts any differently would both unfairly penalize early compliance and discourage any POUs from extending existing contracts. POUs should not be forced to enter new long-term contracts to meet the LTR when existing PCC0 long-term contracts or ownership agreements would fully meet the LTR. POUs should not be faced with the prospect of prematurely ending a PCC0 long-term contract or ownership agreement or engage in over-procurement because of the need for new long-term procurement to meet the LTR.
7. **What market impacts, if any, could occur if the requirements for long-term procurement under the LTR differ for POUs and retail sellers?** SMUD cannot think of any impacts to the market if there are some differences between the implementation specifics of POU and retail seller requirements with regard to the LTR. The basic procurement target and portfolio balance requirements in the law are the main drivers of the RPS. POUs and retail sellers are not identical entities, and there can be commensurate reasonable differences in RPS implementation details without impacting the overall RPS market or achievement of the State's RPS goals.
8. **What other conditions need to be addressed to fully characterize the duration of procurement for the purposes of evaluating POU compliance with the LTR?** The CEC should clarify that it will broadly interpret long-term contracts. For example, a small hydropower contract should qualify as long-term procurement, even if during multiple years of that contract, deliveries were not possible due to an extended drought.

Further, if a contract with a term of 10 years or longer allows multiple generators to be the source of generation, that contract should be eligible for compliance with the LTR.



### TOPIC 3: EARLY COMPLIANCE PROCESS

#### **The LTR should be implemented to allow early compliance options.**

SMUD supports the treatment of the early compliance provision of SB 350 described in the LTR White Paper whereby a POU can certify the intent to meet the LTR earlier than the standard 2021 start date in the law. SMUD has certified meeting the LTR from 2017 onward, as allowed in the law, and has adopted rules to apply the excess procurement provisions that come with that LTR commitment. SMUD expects to use those provisions in this current compliance period. Given that the current regulations will not be finalized and adopted until well into 2020, which is the fourth and final year of the compliance period, SMUD appreciates that the LTR White Paper envisions no penalty if a POU elects early compliance but falls short of the LTR through either regulatory decisions or procurement failures. The LTR White Paper also appropriately recognizes the role and discretion of POU governing boards.

#### **SMUD offers the following responses to the discussion questions presented in the Staff Paper:**

- 1. Does staff's proposal effectively implement the provisions of PUC section 399.13 (a)(4)(B)(iii) and section 399.30 (d)(1) for POUs?** Staff's proposal is a reasonable implementation of the PUC provisions mentioned and is consistent with other optional compliance provisions.
- 2. Under staff's proposal, if a POU that elected early compliance for Compliance Period 3 is determined not to have satisfied the LTR for that period during the CEC's verification activities, which occur after the completion of Compliance Period 3, the POU may revise its election. What are the potential compliance impacts if the early election is revised?** A POU that fails to meet the early compliance requirements will be penalized by losing access to the new excess procurement rules. If a POU has short-term contracts that are expected to be counted towards excess procurement, they may be unable to fulfill that expectation and hence face a greater potential for noncompliance with the RPS. The risk of potential noncompliance is an adequate incentive to seriously consider whether to adopt early procurement and is sufficient punishment in the event that the POU must revise its election.

Once again, SMUD appreciates the opportunity to file comments on this matter.

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