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SMUD Comments on Second 15-Day Language Modification of Regulations

Additional submitted attachment is included below.

STATE OF CALIFORNIA
BEFORE THE CALIFORNIA ENERGY COMMISSION

In the matter of:	)	Docket No. 16-RPS-03
	)	
Amendments to Regulations	)	SMUD Comments on RPS
Specifying Enforcement Procedures	)	Regulations Second 15-Day
for the Renewables Portfolio	)	Regulatory Language
Standard for Local Publicly Owned	)	
Electric Utilities	)	September 2, 2020
	)	

COMMENTS OF SACRAMENTO MUNICIPAL UTILITY DISTRICT ON THE SECOND 15-DAY LANGUAGE MODIFICATION OF REGULATIONS SPECIFYING ENFORCEMENT PROCEDURES FOR THE RENEWABLES PORTFOLIO STANDARD FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES

SMUD appreciates the opportunity to review the CEC's Second 15-Day Language Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities (Second 15-Day Language), issued on August 18, 2020.

SMUD has a long history as a leader in supporting renewable energy and promoting greenhouse gas (GHG) emissions reductions. In 2018, SMUD's Board adopted an Integrated Resource Plan (IRP) that balances both demand and supply-side programs to reduce the emissions of our entire portfolio, including generation assets and contracts as well as demand-side programs. SMUD's goal is to achieve a balanced supply and demand portfolio with GHG emissions equivalent to Net Zero by 2040. Additionally, in July 2020, SMUD's Board of Directors (Board) adopted a Climate Emergency Resolution that commits the Board to work towards carbon neutrality by 2030. Achieving these ambitious targets will require a combination of new and existing resources and novel technology advancements while ensuring safe, reliable power and reasonable rates for our customers.

SMUD is implementing our IRP and GHG reduction goals by promoting new electrification and energy efficiency programs and supporting new renewable projects. We are actively developing nearly 400 MW of new renewables, including 276 MW currently under construction, and are evaluating several proposals for new renewable resources which could be constructed in the next five years. Most of SMUD's recent long-term contracts have been for newly developed renewable projects, and along with these additional resources we are actively developing, illustrate SMUD's commitment to supporting clean energy and addressing the real threat of climate change. Moreover, as a publicly owned utility (POU), SMUD is governed by a locally elected Board, which

has the authority to procure resources to meet SMUD's Renewables Portfolio Standard (RPS) requirements and IRP goals; our Board is subject to local oversight and accountable to its constituents. Both SMUD and its Board are committed to executing contracts that support clean, renewable energy and comply with all applicable laws and regulations. Most of SMUD's recent long-term contracts are with new facilities, and we expect to secure additional long-term contracts with new projects going forward to meet RPS targets and our GHG reduction goals. As part of SMUD's balanced portfolio, we also have ongoing contracts with existing projects that have not required significant capital investments.

SMUD has reviewed the Second 15-Day Language, and we share the significant concerns raised by our fellow POUs. Namely, as set forth in greater detail below, the Second 15-Day Language is inconsistent with sections 399.13 and 399.30 of the Public Utilities Code (PUC), and it introduces substantial uncertainty, economic risk, and administrative burden into the renewable contracting and procurement process. These challenges come at a time when, more than ever, utilities need to integrate zero-emission resources into their portfolios. For the following reasons, we strongly encourage the Commission to reconsider its revisions to section 3204(d)(2)(A) and section 3207(c)(5).

The limitations on long-term contracts are vague and inconsistent with PUC section 399.13(b).

Public Utilities Code Section 399.13(b) allows retail sellers to enter into a combination of long- and short-term contracts and requires, beginning January 1, 2021, that "at least 65 percent of the procurement a retail seller counts toward the renewables portfolio standard requirement of each compliance period shall be from its contracts of 10 years or more in duration or in its ownership or ownership agreements for eligible renewable energy resources." Section 399.13(b) thus ensures that resource portfolios, for the purpose of RPS compliance, may strike a balance between short- and long-term contracts—that is, those of "10 years or more in duration." Notably, section 399.13(b) does not set forth additional requirements relating to other terms and conditions of the contracts; it speaks only to contract length.

Notwithstanding the language in section 399.13(b), proposed section 3204(d)(2)(A)(3) of the Second 15-Day Language provides that the Commission *may* require POUs to demonstrate that a long-term contract is not only 10 years or more in duration, but also "supports the financing and development of new eligible renewable energy resources, major capital investments in existing eligible renewable energy resources, or long-term planning and market stability." This is inconsistent with the statute, which limits the Commission's authority to verification of the contract duration.

In addition, section 3204(d)(2)(A)(3) is unnecessarily vague. Because the language is discretionary, it does not provide retail sellers with any assurance that contracts with similar features will be consistently categorized as short- or long-term. A contract treated as long-term in one instance may be treated as short-term in another, depending on which of the various factors in section 3204(d)(2)(A)(3) are considered.

This uncertainty could interfere with efficient procurement of renewable power and would likely result in increased compliance costs and capital reduction available to address the current climate crisis.

Furthermore, section 3204(d)(2)(A)(3) could limit the number and type of projects with which POUs could contract; the language, for example, could be interpreted to require that all future POU contracts be with newly developed projects. At a minimum, this introduces unnecessary risk that a long-term agreement meeting all other RPS requirements may be deemed "short-term" by CEC staff, potentially years after the contract has been signed and energy delivered. This uncertainty will limit contracting options and unnecessarily increase costs of achieving state and local GHG reduction goals.

Additionally, the duration of a particular contract is unrelated to capital spending and market stability, and "major capital investments" made at an existing facility are irrelevant to a particular contract's status as short- or long-term. There are many existing facilities that reach the end of a contract term yet do not require "major capital investments" to continue operating. Decisions to make additional investments in existing facilities are based on economic factors and resource availability, and the decision to contract with these facilities needs to be determined by local governing bodies.

Finally, with respect to the potential requirement that a contract also support "long-term planning and market stability," SMUD notes that long-term planning does *not* identify specific contracts that POUs should be acquiring; instead, it identifies resource needs and plausible scenarios for filling these needs. Further, no single contract can result in overall "market stability." As drafted, section 3204(d)(2)(A)(3) could be broadly interpreted to mean that some resources would never qualify as long-term unless repowered or purchased. This could remove otherwise viable resource options from consideration. Such options might include baseload geothermal and biomass resources operating for over 20 years; small hydro throughout the state and Pacific Northwest; and, older wind units constructed during the late 1980s and 1990s. Many of these projects can be operated for an additional 10 years or more without the need to repower.

The Commission does not have *ex post facto* contract oversight authority.

Particular decisions regarding procurement and contract design are best left to a POU's local governing board. Not only are such boards best positioned to make decisions for their utility and constituents, but they are also specifically authorized by statute to do so per PUC § 399.30. As set forth above, PUC § 399.13(b) does not provide the Commission with any separate or additional authority to define the terms and conditions of a long-term contract. Notwithstanding the plain language of the statute, the proposed revisions within sections 3204(d)(2)(A)(3) and 3207(c)(5) the Second 15-Day Language arguably result in CEC staff having a significant, *ex post facto* oversight role in a POU's contracting procedures, which may interfere with a POU's ability to optimize its resource mix.

For example, SMUD might negotiate a long-term agreement for a fixed quantity of output from an existing Geothermal project located in California. Perhaps in doing so, SMUD determines it has a need for fixed output for 9 years of 100 MWh/yr, declining to 50 MWh in year 10. SMUD's Board may find that this contract design is well-aligned with SMUD's competitive long-term strategy for achieving its climate goals at the lowest cost to ratepayers. In this scenario, SMUD should not have to justify its reasons for structuring the contract in this manner or provide public disclosure to the CEC of its deliberations or rationale.

Replacement Language in Section 3204(d)(2)(J)(3.iii)

SMUD generally supports the additional clarification provided by the Second 15-Day Language in section 3204(d)(2)(J)(3.iii). However, the language should be revised to better reflect the reality of long-term agreements. The current draft suggests that a POU could know whether a project was capable of meeting obligations but failed to do so. That is not the case for many contracted resources. Since most renewable projects are owned and operated by third parties, purchasers like SMUD may not know whether the operator was able to deliver energy but chose not to for a multitude of reasons. We support the edit recommended by our fellow POUs as set forth below:

> Notwithstanding section 3204 (d)(2)(J)3.i-ii., replacement energy procured from another RPS-certified facility, as allowed by the original long-term contract, shall be considered part of the original long-term contract if the POU can submit information demonstrating that the need for replacement energy occurred because the RPS-certified facility specified in the original long-term contract did not ~~was unable to~~ perform as the contract required.

Conclusion

SMUD values its strong working relationship with the Energy Commission and is confident that with further discussion, the public power community could address the concerns Staff seeks to allay with the very recent introduction of these proposed revisions. Fifteen days simply does not allow for that level of collaboration. SMUD appreciates the opportunity to provide these comments to the Commission.

/s/

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