**SMUD**

SACRAMENTO MUNICIPAL UTILITY DISTRICT
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P.O. Box 15830, Sacramento, CA 95852-1830; 1-888-742-SMUD (7683)

LEG 2007-0046

January 22, 2007

Via hand delivery

California Energy Commission
Re: Docket No. 02-REN-1038
and Docket No. 03-RPS-1078
Docket Unit, MS-4
1516 Ninth Street
Sacramento, CA 95814-5504

02-REN-1038	
DOCKET	
03-RPS-1078	
DATE	JAN 22 2007
RECD.	JAN 22 2007

Re: Public Comments
Docket No. 02-REN-1038 and Docket No. 03-RPS-1078

Dear Sir or Madam:

Enclosed for filing is an original of the Workshop Comments of the Sacramento Municipal Utility District on Guideline Revisions for the Renewable Energy Program and RPS Implementation that was also submitted via email to docket@energy.state.ca.us this afternoon.

Sincerely,

Laura Lewis
Senior Attorney

/cd

Encl.

ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA

Implementation of Renewables)	Docket No. 02-REN-1038
Investment Plan Legislation)	Renewable Energy Program
and)	
Implementation of Renewables)	Docket No. 03-RPS-1078
Portfolio Standard Legislation)	RPS Proceeding
)	

Workshop Comments of the Sacramento Municipal Utility District on
Guideline Revisions for the Renewable Energy Program and RPS Implementation

January 22, 2007

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**WORKSHOP COMMENTS OF THE
SACRAMENTO MUNICIPAL UTILITY DISTRICT ON
GUIDELINE REVISIONS FOR THE RENEWABLE ENERGY PROGRAM
AND RPS IMPLEMENTATION**

Pursuant to the Notice of Committee Workshop on Guideline Revisions for the Renewable Energy Program and RPS Implementation¹, the Sacramento Municipal Utility District (SMUD) submits the following comments on the California Energy Commission's Draft Renewables Portfolio Standard Eligibility Guidebook, Second Edition (Draft Guidebook).

I. INTRODUCTION

At the outset, SMUD appreciates and thanks the Commission for agreeing to extend the date for submission of written comments to the Commission to January 22nd. We commend the Commission and its staff for completing this Draft Guidebook and prior versions of the RPS eligibility Guidebook because it provides valuable insight into the Commission's implementation of newly enacted SB 107.

SMUD is a publicly owned utility (POU) with demonstrated leadership in developing renewable energy supplies for the Sacramento region. SMUD's Renewable

¹ Although the Workshop Notice specifies January 15, 2007 as the final date to submit written comments, this deadline was extended to January 22, 2007 at the January 10th workshop.

Energy supply program boasts two major components: (1) An award-winning green pricing program (Greenergy) SMUD launched in the 1990's; and (2) An RPS program that SMUD's Board adopted one year before California enacted the State Renewables Portfolio Standard (RPS) legislation.

The RPS statutes in the California Public Resources and California Public Utility Codes do not obligate POU's to the same RPS rules as "retail sellers". However, Section 387(b) of the California Public Utilities Code² creates an anomalous situation that requires POU's to submit reports to the Commission as if they were subject to the same RPS requirements. Specifically, Section 387(b) mandates that POU's report to the Commission the resource mix it used to serve its customers by fuel type:

...with separate categories for those fuels that are eligible renewable energy resources as defined in Section 399.12, *except that the electricity is delivered to the local publicly owned utility and not a retail seller.* (Emphasis added).

That section further provides that:

Electricity shall be reported as having been delivered to the local publicly owned electric utility from an eligible renewable energy resource *when the electricity would qualify for compliance with the renewables portfolio standard if it were delivered to a retail seller.* *Id.* (Emphasis added).

In light of these new reporting requirements, SMUD seeks to ensure that the Draft Guidebook provides a mechanism for resources that it owns or procures under contract to be certified by the Commission as RPS-eligible. As evidenced by the italicized language above, and as demonstrated in further detail in these comments, the Legislature clearly intended that resources owned by or under contract with POU's be placed on equal footing as those owned by or under contract with retail sellers. Further, by enabling POU's to obtain Commission-certification of their own renewable resources, or the renewable

² All further statutory references are to the California Public Utilities Code, unless otherwise specified.

resources that they procure through contract, the Commission assists POU's in "implementing and enforcing a renewables portfolio standard that recognizes the intent of the Legislature to encourage renewable resources," as required under Section 387(a).

SMUD provides the following comments in order to include language in the Guidebook that will allow POU's the enhanced opportunity to have their RPS-eligible resources certified by the CEC, while at the same time recognizing the clear authority the Legislature has granted POU's to establish certain criteria for their RPS portfolios. SMUD also provides some general clarifying comments on various Draft Guidebook criteria. The comments are organized by section and page numbers of the Draft Guidebook.

II. THE DRAFT GUIDEBOOK SHOULD ADOPT A FLEXIBLE DEFINITION OF BUNDLING (Section I Introduction and II. A RPS Targets)

Due to transmission and other very real constraints to renewable energy supply growth, SMUD advocates a more flexible definition of "bundling" and "energy and associated RECs" such as: "RECs procured in the same contract as the energy and/or RECs procured from the same facility as the energy." This more flexible definition of the term "bundling" and "energy and associated RECs" will allow for continued growth of renewable energy while transmission and other fundamental issues now restraining renewable energy growth are mitigated. SMUD also supports the proposal that RECs alone be eligible for at least a portion of a utility's RPS.

III. SMUD SUPPORTS RPS-ELIGIBILITY FOR BIOGAS CONVERTED TO PIPELINE QUALITY GAS (Section II.B.7)

SMUD strongly supports the proposition that biogas converted to pipeline quality gas should be RPS-eligible. SMUD has a program offering incentives for biogas

development from problem wastes in the Sacramento region. This program mitigates local air and water quality issues, and it also reduces the emissions of greenhouse gases. Allowing RPS-eligibility for biogas converted to pipeline quality gas will further the encouragement of biodigesters and will provide important, productive solutions to some environmental problems associated with waste disposal. SMUD believes that the methodology proposed by staff is appropriate with the following exceptions and comments based on the questions posed by staff in the Draft Guidebook.

- A. Should biogas injected into the gas transmission pipeline and converted into electricity be RPS-eligible? If so, is this methodology appropriate?

SMUD Response: SMUD believes that biogas injected into the gas transmission/distribution system and converted to electricity should be RPS-eligible. Gas injected into the system may be used in a large-scale power plant that is more energy and emissions efficient than the smaller engines often used to burn biogas.

However, the proposed methodology, in SMUD's view, is not entirely appropriate. The Draft Guidebook bases the proposed requirements for qualification of RPS-eligible fuel upon an assumed fact regarding the scheduling of natural gas by users of the gas transmission/distribution system. Specifically, the Commission draft Guidebook states:

Natural gas regulations require gas entering the system to be 'nominated' for use at a specific power plant. Consequently, the amount and energy content of the biogas or other RPS-eligible gas produced can be measured and nominated for use at a specific power plant. (Draft Guidebook, p. 25)

The proposed related eligibility requirement states

4. The gas must be used at a facility that has been certified as RPS-eligible. As part of the application for certification, **the applicant must attest that the RPS eligible gas will be nominated to that facility** [emphasis added]. Also, the

applicant must provide the annual average heat rate of the facility. (Draft Guidebook, p. 26)

It is not always true that gas entering the system is “nominated” for use at specific power plants. It depends upon the situation of the gas purchaser. It may be that for stand-alone power plants, the purchaser nominates gas to be delivered to that plant. In SMUD’s case, however, it nominates gas to be delivered to its own pipeline system at its interconnection to the PG&E system, and does not nominate gas to be delivered to any specific plant that SMUD’s pipeline supplies. Therefore, under the proposed language, SMUD would arguably not be able to count as RPS-eligible the electricity generated at its natural gas-fired power plants that was produced from purchased RPS-eligible fuel.

In a case such as SMUD’s, all gas procured for its system is allocated pro-rata on a gas-consumed basis, to each of the thermal plants in SMUD’s service area. The biogas purchase would be allocated pro-rata with other natural gas purchases to the thermal plants. These plants are owned by separate Joint Powers Authorities (JPAs),³ and there is a contractual obligation between SMUD and the JPAs to equally share in the average costs of SMUD system gas. To determine the energy production associated with the purchased biogas, SMUD may provide the average heat rate of each of its thermal plants or an average for its system of plants, but in doing so SMUD would request that Commission keep this information confidential. Accordingly, SMUD proposes the following changes to the RPS-eligible fuels requirements:

Modify the second paragraph (page 25, second full paragraph) as follows:

Gas must meet strict heat content and quality requirements within a narrow band of tolerance to qualify as pipeline grade. Quantifying RPS-eligible energy production requires accurate metering of the volume of biogas injected into the

³ The JPAs are controlled by SMUD and were created for financing purposes. SMUD purchases all of the electricity produced by the plants under separate power purchase agreements.

system and the measured heat content of the injected gas. ~~Natural gas regulations require gas entering the system to be 'nominated' for use at a specific power plant.~~ Consequently, the amount and energy content of the biogas or other RPS-eligible gas produced can be measured ~~and nominated for use at a specific power plant.~~ (Another Option would be (after the word "measured" above): "...and nominated for use at a specific power plant, or for delivery to a gas system with multiple plants.")

Modify criterion 4 (page 26, second full paragraph) as follows:

4. The gas must be used at a facility(ies) that has (have) been certified as RPS-eligible. As part of the application for certification, the applicant must ~~attest that the RPS-eligible gas will be nominated to that facility~~ specify the intended source or sources of RPS-eligible fuel. Also, the applicant must provide the annual average heat rate(s) of the facility(ies) designated to consume the biogas.

B. What published data are available to determine an annual average heat rate for a facility?

SMUD Response. SMUD does not believe that published data exists that could be used to determine a given facility's annual average heat rate because of competitive reasons among power plant owners. Of course, SMUD has a complete suite of heat rate data for its JPA plants. However, and for competitive reasons, we likewise would not want this data conveniently available in the public domain. All Commission reporting of competitively sensitive data should be accomplished pursuant to appropriate confidentiality and non-disclosure provisions.

Alternatively, annual reporting and certification of greenhouse gas emissions using California Climate Action Registry (CCAR) protocols could easily be incorporated into the certification process, and specific source gas usage and resultant emissions at an individual or group of generators also could be reported as desired. Total biogas used, its heat content, and/or electricity generated from it could all be reported without revealing confidential information about the individual generation unit. Such reports would be

validated by a simple statement of authenticity by the third party certifier normally used for the CCAR entity-wide certification.

- C. What, if any, additional information should the facility operator be required to report on a monthly or annual basis to ensure the facility is only credited for that portion of the generation associated with RPS-eligible fuel?

SMUD Response. RPS-eligible fuel flow, as a percentage of total plant fuel flow, along with generation and generators heat rate, will suffice. An effort needs to be made to keep these reporting requirements from becoming overly burdensome.

- D. Should the facility operator be required to report the monthly volume of RPS eligible fuel supplied to the gas transmission pipeline and the monthly volume of natural gas used at the facility?

SMUD Response. Yes, using same parameters described in answer to question C, above.

- E. What information should the fuel supplier be required to report to the Energy Commission to verify the eligibility of the fuel?

SMUD Response. Sufficient information to determine that the fuel meets the definition of an eligible renewable fuel; e.g., organic in nature, from manure, sewage, source separated food, etc.

IV. THE COMMISSION SHOULD AMEND THE GUIDEBOOK TO CLARIFY THAT A POU MAY REPORT, AS RENEWABLE, PURCHASES FROM AN OUT-OF-STATE FACILITY THAT COMMENCED COMMERCIAL OPERATIONS BEFORE 1/1/2005 IF THE FACILITY IS PART OF THE POU'S BASELINE AS DETERMINED BY ITS GOVERNING BODY (Section II. D, Eligibility of Out-of-State Facilities)

Section 399.12 of the California Public Utilities Code defines "eligible renewable energy resource" as an electric generating facility that meets the definition of "in-state renewable electricity generation facility" in Section 25471 of the California Public

Resources Code, subject to specified limitations. The definition of “in-state renewable electricity generation facility” includes out-of-state facilities that (1) are connected to the WECC transmission system; (2) commence commercial operations after January 1, 2005; (3) demonstrate delivery to an in-state market hub or in-state location; (4) do not cause or contribute to any violation of a California environmental quality standard or requirement; (5) if located out of the United States, are developed and operated in a manner that is as protective of the environment as a similar facility located in California; and (6) participate in an RPS tracking and verification system approved by the Commission.

Consistent with the statute, the Guidebook provides that an out-of-state facility that commences commercial operation before January 1, 2005 may also qualify as an eligible renewable energy resource (and thus be certified as RPS-eligible) if “the facility is part of a retail seller’s existing baseline procurement portfolio as identified by the CPUC”, and the facility meets the other conditions specified above. Draft Guidebook, p. 29. The Draft Guidebook, however, remains silent with respect to how this particular out-of-state requirement applies to POUs that are, by definition, not “retail sellers” and are not subject to regulation by the CPUC. The Draft Guidebook’s oversight of this issue raises some concerns for SMUD, in light of the fact that SMUD currently procures under long-term contracts electricity from out-of-state resources that would meet the definition of eligible renewable energy resources, if the electricity were delivered to a retail seller.

SMUD encountered a similar problem during the drafting of SB 107. As explained in more detail below, SMUD worked with the drafters of SB 107 to craft a workable solution, which is found in the express language of California Public Utilities Code § 387.

By way of background, Section 387 specifically explains the limited manner in which the renewable portfolio standard (RPS) provisions of the Public Utilities Code apply to POUs. In particular, Section 387(a) vests the local governing body of a POU with the authority to implement and enforce its own:

...renewable portfolio standard that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement.

Thus, it is hardly surprising that the RPS requirements outlined in the remainder of the California Public Utilities Code and the California Public Resources Code are drafted in the context of their application to “retail sellers”.

That said, language added to Section 387(b) of the Public Utilities Code requires POUs to report to the Commission the resource mix it used to serve its customers by fuel type “with separate categories for those fuels that are *eligible renewable energy resources as defined in Section 399.12...*” (Emphasis added). Consequently, SB 107 creates a bizarre situation in which POUs are not subject to the same renewable portfolio standards as retail sellers, but are required to report to the Commission as if they are subject to the same requirements. The Commission acknowledged as much in its most recent update to the Integrated Energy Policy Report Update, in which the Commission states:

The 2005 Integrated Energy Policy Report recommended applying RPS rules consistently to all entities, including POUs. *Toward this end, the recently passed SB 107 clarifies that renewable energy claimed by POUs for RPS compliance must meet the same eligibility requirements as those applied to the IOUs.* 2006 Integrated Energy Policy Report Update (January 2007) at 12 (emphasis added).

During the drafting of SB 107, SMUD specifically alerted the drafters to the fact that the language in Section 399.12, which incorporates by reference the definition of “in-state renewable electricity generation renewable electricity generation facility” in Section

25471 of the Public Utilities Code, posed potential problems for POU. Accordingly, SMUD requested that SB 107 be amended to make clear that an out-of-state facility would not be precluded from qualifying as an “eligible renewable energy resource” simply because it was owned by or sold its output under contract to a POU.

In response to SMUD’s concerns, Section 387(b) was amended to require POUs to report to the Commission the resource mix it used to serve its customers by fuel type “with separate categories for those fuels that are eligible renewable energy resources as defined in Section 399.12, *except that the electricity is delivered to the local publicly owned utility and not a retail seller*”. (Emphasis added). See August 7, 2006 amendments to SB 107. That section further provides that “Electricity shall be reported as having been delivered to the local publicly owned electric utility from an eligible renewable energy resource *when the electricity would qualify for compliance with the renewables portfolio standard if it were delivered to a retail seller*.” *Id.* (Emphasis added). In simpler terms, if the electricity would be RPS-eligible if it were delivered to a retail seller, the electricity would be RPS-eligible if it were delivered to a POU. Accordingly, the fact that the energy is delivered to a POU, as opposed to a retail seller, does not preclude the facility from falling within the definition of eligible renewable energy resource.

Further, as noted above, Section 387(a) provides the governing body of the POU with the authority to implement and enforce its own renewable portfolio standard, which naturally includes the adoption of any baseline standard. Thus, one must logically conclude that the Legislature intended to afford the same deference to the governing body of the POU that it extended to the CPUC in terms of the baseline determination.

Otherwise, a POU would never be able to report electricity deliveries from out-of-state resources that commenced commercial operations before January 1, 2005, as having been delivered from an eligible renewable energy resource. Nothing in the legislative history of SB 107 or the statutory language itself supports such an absurd result. To the contrary, the legislative history demonstrates that language was added to SB 107 to avoid this very situation.

Thus, with respect to POUs, the Draft Guidebook should recognize that (a) an out-of-state facility that commenced operations before January 1, 2005 and is owned by or sells its output to a POU may be RPS-eligible, if it is part of the POUs baseline as of the effective date of SB107, and (b) the governing body of the POU is the entity vested with the authority to identify the baseline for the POU that it regulates. These modifications will ensure that, consistent with the statutory requirements set forth in Section 387(b), a POU may report as having been delivered from an eligible renewable energy resource any out of state electricity purchase that it makes from a facility that commenced commercial operations after January 1, 2005, if the facility is part of the POU's existing baseline as determined by its governing body. Accordingly, SMUD requests that the Commission clarify that a POU may report electricity as having been delivered from an eligible renewable energy resource if "the facility is part of a POU's existing baseline procurement portfolio as identified by its governing body".

V. SMUD SUPPORTS THE GUIDEBOOK'S CLARIFICATIONS REGARDING THE DELIVERY REQUIREMENTS (Section II.E. Delivery Requirements)

SMUD strongly supports the direction the Commission has taken in allowing the respective North American Electric Reliability Council (NERC) tag to specify either the renewable generator or the supplying "balancing authority" as the source for the energy

tag. SMUD currently purchases renewable energy from a “balancing authority”, in order to provide for firming of the renewable resource. Under the given situation, it is very difficult for the “balancing authority” to tag the energy transaction back to the specific renewable energy facilities themselves because of Federal Energy Regulatory Commission (FERC) issues with Open Access Transmission Tariff (OATT) rules. Consequently, SMUD supports the new changes.

To clarify its intent and to true-up the criteria with NERC tagging convention, however, SMUD proposes that criteria 2 in the Delivery Requirements, section E (Draft Guidebook, p. 30) current language be struck-out and new language be added to read:

2. The delivering Control Area identified on the NERC tag Source line must be the Control Area in which the RPS-eligible facility operates. The Source identified on the NERC tag Source line may be either the RPS-eligible facility, or “SYSTEM” as allowed by NERC to recognize a system delivery out of the originating Control Area.

Similarly, Criterion 3 appears to limit the tag to one RPS-certification number.

SMUD has some current commitments that are tied to one or more RPS-eligible facilities.

There is no reason to treat purchases sourced from multiple RPS-eligible facilities differently from purchases sourced by a single RPS-eligible facility. Accordingly,

SMUD suggests that criteria 3 be modified to read:

3. The RPS-certification number(s) of the facilities from which the retail seller or procurement entity procures the energy must be shown on the comment field of the NERC tag.

VI. SMUD STRONGLY SUPPORTS THE ELIGIBILITY OF TRADABLE RECS (Section II.F. Eligibility of Tradable RECS)

SMUD strongly supports the proposal that RECs alone should be eligible for the RPS for at least a portion of the RPS requirements. Lack of transmission access to

renewable resource areas and the California RPS energy delivery requirements currently restrains the growth of renewable energy in the West. Since building new transmission lines will require many years of planning, development and construction, an approach to support new renewable energy development is to build renewable generation in resource areas where there is adequate transmission to meet local electricity loads. Allowing REC purchases alone (e.g., from outside the local transmission area) by retail sellers and POU's for RPS eligibility will provide monetary support to allow local renewable energy development. This action would mitigate transmission constraints and would support the statewide RPS policy of continuous renewable energy supply growth for California.

VII. SMALL HYDRO FACILITIES SHOULD BE RPS-CERTIFIED IF A POU OWNED OR PROCURED ELECTRICITY FROM THE FACILITY AS OF DECEMBER 31, 2005 (Section III.A. Applying for Certification)

The Guidebook encourages POU's to meet their RPS obligations through procurement from RPS-certified facilities. Draft Guidebook, p. 35. Nevertheless, the Draft Guidebook states that a small hydro facility that sells its generation to a POU is not eligible to be RPS-certified. *Id.* The Guidebook points to the statutory language that provides that for a small hydro facility to become RPS-certified, a "retail seller" must have owned the facility or procured electricity from it as of December 31, 2005. *Id.* Thus, the Draft Guidebook concludes that because the statute uses the term "retail seller" and the definition of the term "retail seller" does not include a POU, a small hydro facility cannot be RPS-certified if a POU (as opposed to a retail seller) owned the facility or procured the electricity from it as of December 31, 2005. *Id.* As demonstrated below, the Draft Guidebook misconstrues the statutory language as it applies to a POU's procurement of renewable energy from existing small hydro facilities.

As noted above in the context of the out-of-state requirements, SMUD was instrumental in adding language to SB 107 that would ensure that POU's and retail sellers would be treated equally with respect to the ability to obtain RPS-certification for their facilities. Consequently, the legislature added California Public Utilities Code section 387(b)(2), which states very clearly that POU's "Reports shall contain the contribution of each type of renewable energy resource with separate categories for those fuels that are eligible renewable energy resources as defined in Section 399.12, *except that the electricity is delivered to a local publicly owned utility and not a retail seller.* Electricity shall be reported as having been delivered to the local publicly owned electric utility from an eligible renewable energy resource *when the electricity would qualify for compliance with the renewable portfolio standard if it were delivered to a retail seller.*" (Emphasis added). These reporting provisions unambiguously allow a POU to report its resource mix based on the RPS eligibility definitions for "retail sellers". In other words, the Legislature sought to avoid the untenable situation created by the Draft Guidebook, in which a facility's eligibility for RPS-certification depends on whether or not the facility's output is owned or procured by a "retail seller".

The impact created by the conflicting statutory language is significant, and requires clarification before final approval of the Draft Guidebook. SMUD has chosen to maintain close consistency with statewide RPS eligibility requirements. In fact, over the past two years, SMUD has solicited RPS-eligible facilities, and required that renewable energy facilities that enter into Power Purchase Agreements (PPAs) with SMUD be RPS certifiable facilities.

The fact that the contradiction in language creates RPS uncertainty for an otherwise RPS eligible resource is more than merely hypothetical. SMUD began procurement and contracted with RPS eligible resources prior to December 31, 2005. Specifically, in July 2005, SMUD entered into two long-term power purchase agreements with a small hydro renewable resource owner to purchase, in aggregate, up to 40 MW. At the time SMUD entered into the contracts, the facilities were clearly RPS-eligible renewable energy resources. Under the Draft Commission RPS Guidebook, these small hydro facilities would no longer be eligible for RPS certification. Such a conclusion has obvious adverse consequences for both SMUD as the purchaser, as well as the seller.

According to the Draft RPS Guidebook, SMUD would now not be able to report the output it currently receives under the contract from the small hydro facilities mentioned above as RPS certified, simply because the parties were proactive and completed the contracts prior to December 31, 2005. This is evidenced by the Commission-RPS-POU draft Form Question 3(d), which requires SMUD to inform the Commission of how much renewable electricity it procured or generated to serve its retail customers from facilities *certified* by the Energy Commission as RPS-eligible, but only allowing *pre-certification* for the small hydro acquired. With this interpretation, SMUD would appear to be less “green” than its retail seller counterparts, when clearly this is not the case.

There is no reason to differentiate RPS eligibility for small hydro facilities either owned by POUs or under contract with POUs from those small hydro facilities owned by or under contract with “retail sellers”. Furthermore, with respect to SMUD’s specific contracts, the Draft Guidebook, if approved in its current form, would have a perverse

result by triggering SMUD's conditional right to terminate its small hydro renewable contracts to the detriment of the overall RPS goals for California.

The Draft Guidebook's interpretation creates an unequal playing field in the procurement of renewable supplies by rewarding RPS eligibility and full certification to *only* those resources that entered into long-term RPS contracts with retail sellers, and not POUs. The Draft Guidebook creates a discriminatory policy that tilts the RPS-certification rules in the favor of retail sellers, which was clearly not the intent of the legislation. In fact, this interpretation invalidates the statutory language of Section 387(b)(2).

For reasons set forth above, the Draft Guidebook(s) should be modified such that RPS eligible small hydro facilities that have obtained RPS certification for their resource remain eligible for RPS certification in this draft and future guidebooks, regardless of when and with whom the resource contracts

VIII. THE COMMISSION SHOULD AMEND THE GUIDEBOOK TO ALLOW CERTIFICATION OF RPS-ELIGIBLE FACILITIES FOR POUS (Section III.A. Applying for Certification)

Nowhere does the Draft Guidebook provide that the Commission will certify RPS-eligible facilities (either in-state or out-of-state) for POUs. The absence of a provision allowing for the certification of facilities that are either owned or sell their output to POUs is puzzling, in light of the language in the Draft Guidebook stating that "The Energy Commission encourages local publicly owned electric utilities to meet their RPS obligations through procurement from RPS-certified facilities." Draft Guidebook, p. 35.

SMUD has chosen to maintain close consistency with statewide RPS eligibility requirements. In doing so, SMUD has required for the past two years that renewable

energy facilities that sign Power Purchase Agreements (PPAs) with SMUD be certified by the Commission. The current Commission Draft Guidebook provisions only allow pre-certification with a note that it would otherwise be eligible for full certification. For POU's that desire to adhere as closely as possible to the Commission RPS eligibility criteria, facilities serving POU's should have the ability to be fully certified by the Commission for the State's RPS. Moreover, by enabling POU's to obtain Commission-certification of their own renewable resources, or the renewable resources that they procure through contract, the Commission assists POU's in "implementing and enforcing a renewables portfolio standard that recognizes the intent of the Legislature to encourage renewable resources", as required under Section 387(a). Accordingly, the Draft Guidebook should be modified to provide this option.

IX. THE POU REPORTING REQUIREMENTS SHOULD INCORPORATE THE TERM RENEWABLE ENERGY SUPPLY (Section V. Publicly Owned Utilities)

Because SMUD has two programs (RPS and Greenergy) that contribute to its renewable energy supply, SMUD requests that statewide reporting rules allow both programs to report to the Commission and that the Commission reflect both programs in its publicly available information regarding each utility's renewable energy supply. Therefore, SMUD recommends that the reporting requirements, including all Commission forms, reflect the term "renewable energy supply" rather than "RPS" in all questions to POU's. Our reasoning here is that although SMUD separates the accounting of our green pricing program (Greenergy) from our RPS program, we also recognize that most of what is eligible for Greenergy is also eligible for our RPS. In summary, SMUD does not want its renewable energy supply to be counted only as an RPS program

because SMUD's Greenergy program also provides a significant supply of RPS-eligible renewable energy to SMUD customers.

Accordingly, SMUD requests the following changes to the forms (pages A-23, A-24 :

3. c) How much renewable electricity did the utility procure or generate last year to serve its retail customers in compliance with its own renewable portfolio standard ~~and~~ or renewable energy supply goal?

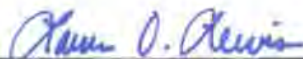
Part II, 2. Has the utility established an annual RPS or Renewable Energy Supply target comparable to that of an electrical corporation?

SMUD recommends that the Commission approve the Draft Guidebook, with the modifications specified herein, as soon as possible and that the effective date of the eligibility guidebook be January 1, 2007. An effective date of January 1, 2007 is consistent with the effective date of SB 107, and will minimize confusion regarding RPS eligibility to retail sellers and POUs for the full year of 2007.

Again we commend the work of staff and the Commission in helping to clarify RPS eligibility rules for everyone, including POUs that would like to maintain a high level of consistency with the Statewide RPS eligibility rules.

Dated: January 22, 2007

Respectfully submitted,



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