**SMUD****SACRAMENTO MUNICIPAL UTILITY DISTRICT**
The Power To Do More.™*P.O. Box 15830, Sacramento, CA 95852-1830; 1-888-742-SMUD (7683)*

February 16, 2010

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

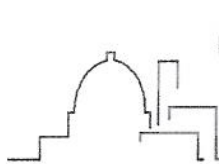
DOCKET**02-REN-1038**DATE FEB 16 2010RECD. FEB 18 2010**RE: California Energy Commission Draft 2006 RPS Verification Report; Comments of the Sacramento Municipal Utility District**

The Sacramento Municipal Utility District (SMUD) appreciates the opportunity to provide comments on the *Renewable Portfolio Standard (RPS) 2006 Procurement Verification Draft Staff Report* (Draft 2006 RPS Verification Report).¹ SMUD's comments relate to the RPS eligibility of Southern California Edison's (SCE) contract for power from the Mountain View I and II facilities. SMUD supports the determination in the Draft 2006 RPS Verification Report that generation from the Mountain View I & II wind facilities (Mountain View) for the years 2004-2006 is ineligible to be claimed by SCE for compliance with the California RPS. Declaring this generation ineligible to be claimed by SCE will uphold the integrity of thousands of contracts and marketing claims and the RPS verification process at the CEC, and will thereby provide market security and certainty.

The plain fact is that the renewable attributes of the generation in SCE's Mountain View contract were specifically and explicitly allocated not to SCE but to Mountain View's owners, who then sold RECs into the voluntary market. As a result, electricity from the Mountain View facilities claimed by SCE for RPS compliance are technically "unbundled" energy-only products. Claims from the Mountain View facilities under the 2001 Department of Water Resources (DWR) contract are ineligible for RPS compliance because the procurement did not include the RECs, and it would constitute double counting of the RECs to the extent that they have already been legitimately claimed or used by the actual purchasers of the RECs.

Since it is clear that the RECs from Mountain View, and hence the associated renewable claims, were not allocated to SCE and in fact have been allocated and used elsewhere, the CEC cannot legally certify SCE's RPS claims once the CEC is aware of this other purpose use. Neither Mountain View's explicit contract language, the RPS legislative intent, historical regulatory

¹ Barkalow, Gina, Theresa Daniels, Lorraine Gonzales. 2010. *Renewables Portfolio Standard 2006 Procurement Verification Draft Staff Report*. California Energy Commission. CEC-300-2009-006-SD

**SMUD****SACRAMENTO MUNICIPAL UTILITY DISTRICT**
The Power To Do More.SM

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

interpretations, nor standard industry practice provide a reason to allow SCE to claim RPS compliance for the unbundled electricity purchased from Mountain View.

Nor does SCE's or regulatory staff's previous inattention to the explicit language regarding facility retention of RECs in the 2001 DWR contract excuse the invalidity of SCE's RPS claims. SCE cannot be allowed to claim RPS credit for the Mountain View energy on the grounds that SCE failed to properly read the DWR contract or correctly report the energy purchased, nor on the grounds that regulatory staff did not immediately challenge SCE's faulty claims in this regard. These are not valid reasons to ignore the CEC's legal responsibility regarding verification of RPS claims. The true nature of these purchases should have been clear to all parties from the beginning and once known they should be classified as noncompliant with the RPS retroactively from the beginning.

If SCE is allowed to claim these RECs to meet its RPS obligation, the effect will be to call into question more than a thousand GWh of renewable claims associated with purchases of Mountain View RECs in the voluntary market, in turn creating contractual liabilities, the potential for lawsuits, and inappropriate damage to the reputations of the companies involved in these transactions. In SMUD's case, SMUD has purchased Mountain View RECs to meet renewable requirements for customers in our voluntary customer green energy program ("Greenergy©"). Allowing SCE to claim these RECs may damage SMUD's Greenergy© program as well as cause damage to the entire voluntary market and the credibility of regulatory enforcement of the RPS.

Thank you for your consideration.

Sincerely,

MICHAEL DeAngelis
Manager, AR&DGT Program
Sacramento Municipal Utility District