

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

In the matter of:)	Docket No. 11-RPS-01
)	
Developing Regulations and Guidelines)	Docket No. 02-REN-1038
for the 33 Percent Renewables Portfolio)	
Standard)	Comments on 33 Percent
)	Renewables Portfolio Standard
And Implementation of Renewables)	Pre-Rulemaking Draft
Investment Plan Legislation)	Regulations for Publicly Owned
)	Electric Utilities
)	
)	August 13, 2012

**Comments of the Sacramento Municipal Utility District
(SMUD) on 33 Percent Renewables Portfolio Standard
Pre-Rulemaking Draft Regulations for Publicly Owned
Electric Utilities**

Thank you for the opportunity to provide comments on the ***33 Percent Renewables Portfolio Standard Pre-Rulemaking Draft Regulations for Publicly Owned Electric Utilities, July 2012***. Again, it is clear that the Energy Commission staff has taken a thoughtful and comprehensive approach to this revision of the enforcement procedures of the RPS for local publicly owned electric utilities (POUs). SMUD appreciates this thoughtful approach and the hard work by staff.

SMUD strongly supports the changes in the July Draft Regulations from the March draft of the pre-rulemaking regulations. In particular, SMUD appreciates the inclusion of provisions that allow calculation and use of historical carryover, and count historical short-term contracts (less than 10 years) “in full.” SMUD also strongly supports the removal of explicit “reasonable progress” provisions in the July Draft Regulations. SMUD agrees that the compliance period obligations are sufficient to ensure reasonable progress under the law. Other changes to appropriately treat Category 3 resources for purposes of calculating excess procurement and to clearly reflect the portfolio balance requirements among the three categories in SBX 1 2 and their interaction with grandfathered “count in full” resources are also good revisions.

In these comments, SMUD highlights some remaining significant issues in the July Draft Regulations. These involve the treatment of the portfolio content categories. SMUD also comments on other issues that are not as significant, and provides a recommended “redline/strikeout” of the Draft Regulations showing SMUD’s recommended changes.

A. Significant Issues With The July Draft Regulations

1. **Definition of Category 3 Resources and Re-Categorization:** The July Draft Regulations continue to inappropriately expand the definition of Category 3 resources to include some resources that otherwise meet the statutory requirements of Category 1 or Category 2. SBX1 2 provides specific requirements that must be met to be considered Category 1 and 2 resources, and defines Category 3 resources explicitly as:

399.16(b)(3): Eligible renewable energy resource electricity products, or any fraction of the electricity generated, including unbundled renewable energy credits, **that do not qualify under the criteria of paragraph (1) or (2).**

In other words, Category 3 resources are any eligible renewable energy resource electricity products that do not meet the criteria of Categories 1 and 2. The July Draft Regulations, on the other hand, define Category 3 resources as:

(c) Portfolio Content Category 3

- (1) All unbundled renewable energy credits and other electricity products procured from RPS-certified facilities located within the WECC transmission grid ~~and generated by RPS-certified facilities~~ that do not meet the requirements of either Portfolio Content Category 1 or Portfolio Content Category 2 fall within Portfolio Content Category 3.

This definition can be read in two ways. The first way is any electricity products (“All... unbundled RECs and other electricity products ...”) **that do not meet the requirements of Categories 1 or 2** are Category 3 products, leaving room for unbundled RECs from Category 1 or 2 resources to remain in those categories. The second is “all unbundled renewable energy credits...”, **regardless of the underlying resource characteristics**, and any “other electricity products” that do not meet Category 1 or 2 requirements are defined as Category 3 resources. SMUD prefers the first interpretation, and believes that this interpretation is most consistent with SBX1 2. The July Draft Regulations appear to adopt the second interpretation. For example, the July Draft Regulations state: “Portfolio Content Category 1 electricity products must be procured as **and remain bundled** in order to be classified in Portfolio Content Category 1.” A similar, but less clear, statement is included for Category 2 resources.

This interpretation represents an inappropriate re-categorization of Category 1 and 2 resources and should not be included in the July Draft Regulations. Eligible renewable energy resource electricity products that meet the statutory requirements of Category 1 or 2 should not be stripped of their Category status simply because of the unbundling of the resource attributes from the underlying energy, for the following reasons:

- It is an inaccurate reading of § 399.16(b)(3) of SBX1 2. In that paragraph, the word “that” in the phrase “that do not qualify under the criteria of paragraph (1) or (2),” refers to “eligible renewable energy resource electricity products ... including unbundled renewable energy credits...” RECs are referred to as a subset of such products, which in some circumstances qualify under Category 1 and 2, and in others do not. This language clearly implies that a REC possesses the category of the eligible renewable energy resource that creates it. The July Draft Regulations ignore this text and simply categorize all unbundled RECs as Category 3.
- The definition of “renewable energy credit” in § 399.12(h)(1) states that a REC “includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource....” Among the attributes of a Category 1 and 2 resource is the attribute of “portfolio content.” When the Energy Commission proposes to strip an unbundled REC of its portfolio content category, and re-classify it in Category 3, it removes one of the renewable attributes assigned to the REC in § 399.16(b). Thus, the unbundled REC no longer has “all” of the renewable attributes associated with the production of electricity from that eligible renewable energy resource. This conflicts with the statutory definition of a REC in § 399.12(h)(1).
- The underlying resources of these unbundled RECs have already conveyed their Category 1 and 2 benefits when originally procured, and will continue to do so as long as they remain interconnected in the same way as they originally began. Changing interconnection status is impossible for Category 1 resources, and difficult if not impossible for Category 2 resources. These resources have delivered the in-state reliability, jobs, and economic development benefits for which they were favored in the first place.
- Re-categorizing Category 1 resources will increase the costs of the RPS overall, by taking higher cost Category 1 resources and changing their status and value, potentially requiring additional ratepayer expenditure to “make whole” a Category 1 obligation that has already been met once.
- Re-categorizing Category 1 and 2 resources diminishes their re-sale value, in contrast to the clear intent to favor these resources in the RPS structure. If a Category 1 product retains its Category 1 value even when the REC is unbundled and sold, there will be a greater demand for the resource that generated the product, giving it more options in the marketplace and greater inherent value.

- Re-categorizing Category 1 and 2 resources is inconsistent with the scheme of tradable RECs authorized by SB 107 and promulgated by the CPUC.¹ If REC products from Category 1 and 2 resources no longer have their original value, then these products will not be traded as freely, which will frustrate the goals of the Legislature when it authorized tradable RECs.
- Re-categorizing Category 1 resources can eventually lead to significant unintended constraints in the RPS market. If entities take advantage of the opportunity in the law to purchase pure unbundled RECs up to the limits in the law, then adding additional RECs to Category 3 from “re-categorization” will further unbalance the REC market in California, and reduce the value of these resources. In addition, even in cases where everyone meets the Category 1 requirements of the law, changing the category of these resources may lead to the appearance of noncompliance.
- Re-categorizing RECs from Category 1 resources will be more difficult to track in WREGIS and overall. Once a resource is built and interconnected as a Category 1 resource, its WREGIS certificates can reflect that status, and remain unchanged in a simple tracking structure based solely on the constant interconnection status of the resource. However, if RECs from a Category 1 resource change to Category 3 when unbundled, then a current and potentially changing “transaction mode” criterion must be tracked in addition to the basic interconnection criterion underlying the resource.

SMUD contends that there is a simple fix to this inappropriate treatment of RECs in the July Draft Regulations. The definition of Portfolio Category 3 resources should be corrected to follow the law as shown below:

(c) Portfolio Content Category 3

- (1) All ~~unbundled renewable energy credits and other~~ electricity products procured from RPS-certified facilities located within the WECC transmission grid ~~and generated by RPS-certified facilities~~ that do not meet the requirements of either Portfolio Content Category 1 or Portfolio Content Category 2 fall within Portfolio Content Category 3.

It is clear that there are already instances in the practice of the RPS under SBX1 2 where Category 1 resources become “unbundled” in effect, but retain their Category 1 status. For example, when Category 1 RECs are banked, and counted in a subsequent compliance period, these RECs are unbundled from the underlying generation after it meets the Category 1 “scheduling” requirements, and then associated with subsequent

¹ See Assembly Floor Bill Analysis (Sept. 5, 2006) on SB 107, “The bill also addresses problems with transmission constraints by allowing a retail seller to meet its RPS obligations through the purchase of tradable RECs.... However, a REC program will allow the retail providers to more efficiently meet their renewable obligations.”

or substitute energy in the compliance period when claimed for compliance. No one suggests that this implicit unbundling removes Category 1 status. Also, when a Category 1 resource generates in one part of the state, but is procured by an entity that cannot get transmission from that resource to its load, the generation is essentially sold into the ISO market or a similar market, the RECs are brought to the entity's service territory, and associated with other energy purchased to serve load. Again, no one suggests that this "within-the-state" market transaction transforms the Category 1 status of the RECs.

The July Draft Regulations appear to be inconsistent in their treatment of such resources, and this must be fixed. First, the July Draft Regulations include a new definition of "unbundled REC" that does not include the "separated" RECs in the two cases above. This definition reads:

(cc) "Unbundled REC" means a REC from an RPS-certified facility that is not procured as part of the same contract or ownership agreement with the underlying energy from that facility; this includes RECs that were originally procured as a bundled product but were subsequently resold separately from the underlying energy.

So by this definition, if an entity procures a REC as part of the same contract or ownership agreement with the underlying energy, and does not resell the REC, it remains considered a 'bundled' Category 1 REC. It is only if a REC is sold on the market that it becomes "unbundled" by this definition. This treatment makes sense, as it covers the banking and the 'within the state' market cases identified above, without inappropriately treating these situations as involving unbundled RECs.

However, in one aspect the July Draft Regulations may be considered inconsistent with this definition. The description of "Portfolio Content Categories" in Section 3203 contains the following treatment for Category 1 resources:

(a) Portfolio Content Category 1

Portfolio Content Category 1 electricity products must be procured as and remain bundled in order to be classified in Portfolio Content Category 1.

This language, combined with the definition in the July Draft Regulations of the term "bundled", can be read as inconsistent with the "Unbundled REC" definition, and also appears to inappropriately devalue and reclassify Category 1 resources. Strikingly, it is also different than the treatment of Category 2 resources in the July Draft Regulations, where procurement is not required to "remain bundled". SMUD recommends that the language here be altered to clearly indicate that Category 1 resources remain in that Category at least so long as the original procuring entity retains the RECs, even if these RECs are banked and, thus, associated with different energy in the future or if these RECs are held and associated with different energy in the case that in-state transmission constraints or similar dynamics prevent the actual transfer of the energy

from the fully bundled product to the service area of the purchasing entity. There is a simple way of clearing up this issue -- the text here should read:

(a) Portfolio Content Category 1

Portfolio Content Category 1 electricity products must be procured as ~~and~~ ~~remain~~ bundled in order to be classified in Portfolio Content Category 1.

This simple change also prevents the inappropriate bias of the value of these RECs against trading RECs for compliance with portfolio content categories. This interpretation is not supported by the statute and runs counter to the State's policy goals of promoting efficiency and lower ratepayer costs. SMUD recommends the proposed change as well so that any unbundled Category 1 REC retains the attribute of the underlying portfolio content category (Category 1) of the resource from which it was generated.

2. Treatment of Distributed Generation: It is clear that distributed, behind-the-meter, generation in California meets the full requirements of a Category 1 resource under § 399.16(b)(1)(A), and provides the full benefits to California expected of these resources. Thus, under SBX1 2 electricity products from distributed generation, including RECs, should fall under Category 1.

There is nothing in the July Draft Regulations that explicitly discusses distributed generation. However, the July Draft Regulations create a rule that all unbundled RECs, fall within Category 3. It is unclear whether all distributed generation RECs fall within the definition of "unbundled REC", which states:

(cc) "Unbundled REC" means a REC from an RPS-certified facility that is not procured as part of the same contract or ownership agreement with the underlying energy from that facility; this includes RECs that were originally procured as a bundled product but were subsequently resold separately from the underlying energy.

There are two possible situations here. First, in certain instances a customer may retain the RECs metered from distributed generation on his site for his or her own use, even eventually separately selling those RECs to a party other than the distribution utility. Second, which is the case for SMUD, and most other POU's, the distribution utilities have contracted for RECs from these facilities, and thereby acquired title to the RECs as part of the net metering agreement or the "contract" for incentive payments under SB 1. Thus, in most instances, SMUD and other POU's would contend that they have acquired the RECs from their distributed generation facilities "as part of the same contract or ownership agreement with the underlying energy from that facility," and, thus, these RECs are not "unbundled per the CEC definition. A significant portion of the electricity generated by these facilities is sent to customers of distribution utilities, along with the RECs, and alternative energy is supplied to the customers under the net-metering arrangement. Conceptually, SMUD believes that this structure would fit within

the intent of the unbundled REC definition, but adding some words to confirm that would add clarity to this issue.

Even energy that is generated and consumed on-site, however, is in SMUD's view a Category 1 resource based on the terms in the statute. From that perspective, determining in some fashion how much energy is used on-site versus "sent to the grid via net metering" is unnecessary, since it would differ on a customer-by-customer and day-by-day basis, and would be extremely difficult and expensive to delineate. All on-site generation within California should count as Category 1, without an artificial parsing that is inconsistent with the statutory definition of Category 1 resources. The "unbundled REC" definition should be changed for clarity as follows:

(cc) "Unbundled REC" means a REC from an RPS-certified facility that is not procured as part of the same contract ownership agreement with the underlying energy from that facility, or arrangement with the distributed generation site; this includes RECs that were originally procured as a bundled product but were subsequently resold separately from the underlying energy.

This treatment may be not be consistent with the CPUC treatment of these resources, but SMUD disagrees with the CPUC decision and believes that the Energy Commission must independently decide the issue based on the record in its RPS proceeding, with due respect to interagency coordination. The CPUC is wrong on this issue, and the CEC must lead to the right solution. The July Draft Regulations differ from the CPUC structure for retail sellers in other areas, and this is one where a difference makes sense, since POU interactions with behind the meter generators are substantively different than the interactions that retail sellers have with these generators.

Failing to reflect the appropriate Category 1 treatment of these in-state resources is also inconsistent with Governor Brown's goal of having 12,000 MW of distributed renewable generation in California by 2020. SMUD has provided comments in the 2011 IEPR that behind the meter generation is likely to be a significant component of the proposed goal, and that no additional incentive programs are likely to be necessary to achieve that goal. However, SMUD did not envision that the State would actually act to remove existing value streams for these resources. In addition to being inconsistent with the law, specifically § 399.16(b)(1), treating these resources as Category 3 resources removes substantial potential value from these resources as viable in-state participants in the State's new 2020 33% RPS. It is bad policy for California to establish a strong goal to develop 12,000 MW of clean distributed generation and then treat that generation as a statutorily limited and clearly lower-valued Category 3 resource. In some cases, the limitations on this category may in fact remove *all* RPS value from these resources. The Draft Regulations should be modified to remove this inappropriate burden on in-state distributed renewable generation.

3. The Draft Regulations Should Allow Category 2 Resources to be Firmed Within the Same Compliance Period as When the Renewable Generation is Claimed.

The July Draft Regulations state that substitute energy must be procured within the same calendar year as the Category 2 renewable generation. This requirement is not found in the statute, and is not consistent with the “compliance period” structure of the statute. It appears that this scheduling requirement is a holdover from the previous RPS program where the Energy Commission determined the eligibility of firmed and shaped resources “delivered” from out-of-state. The annual firming requirement made sense because retail sellers were required to meet annual procurement targets and the Energy Commission tracked procurement on an annual basis for compliance purposes.

Since annual compliance targets are not a near-term feature of POU compliance (nor of retail seller compliance any longer), and compliance is measured in 3-year periods, the practical rule would be to permit “substitute power” be scheduled within the same compliance period as when the Category 2 generation is claimed for compliance. In this sense, permitting firming within compliance period would be consistent with the Energy Commission’s prior annual delivery requirement.

However, an annual constraint on substitute power, associated with the calendar year of generation of the underlying renewable energy, raises “bottleneck” issues near the end of the calendar year, when late December Category 2 generation must be paired with sufficient “substitute power” by COB December 31 of each year. SMUD contends that there is no real need to suffer these “bottleneck” issues, as the important distinction here is that the “substitute power” be delivered within the same compliance period as when the Category 2 generation is claimed for compliance, so that the generation can be distinguished from Category 3 resources. Section 399.16(b)(2) only requires that Category 2 electricity be “scheduled into a California balancing authority” without any specific timing requirement. No finer degree of timing is required by law, and the Energy Commission has not expressed a valid reason for imposing an annual “matchup” requirement here. Section 399.16(b)(2) only requires that Category 2 electricity be “scheduled into a California balancing authority” without any specific timing requirement.

Again, the purpose of requiring a timing match between the Category 2 generation and the associated substitute energy appears to be so that the generation can be easily distinguished from Category 3 generation – which has no substitute energy requirement. It is sufficient for purposes of determining between these categories to track substitute energy on a compliance period basis. This can occur either if the “substitute power” firms the renewable generation within the same compliance period, or if the renewable generation is not claimed by a POU until associated with “substitute power”, which may occur in the next compliance period. Both of these options should be allowed for maximum flexibility to procure power consistent with the varying market needs and procurement timing practices of each POU. Such treatment should minimize or eliminate the “bottlenecks” where substitute energy for Category 2 resources is constrained by the calendar end of the period.

B. Other Issues

There are several other areas where the July Draft Regulations could be improved. SMUD provides comments on these below.

1. **Inclusion of Incremental Hydro in Eligible Resources:** On page 6, the July Draft Regulations include a definition of “Eligible renewable energy resource.” This definition has been changed from the April Draft Regulations to refer to Section 399.12(e) of the Public Utilities Code, rather than Section 27541 of the Public Resources Code. This change is good, as it explicitly includes the new “conduit hydro up to 40 MW” resources in the eligibility definition – Section 27541 does not mention these added resources. However, as recommended earlier, the definition needs an additional reference to be fully inclusive of eligible resources as intended by the law. The definition should also include a reference to Section 399.12.5, which established the eligibility of incremental efficiency improvements to hydro facilities under certain circumstances. Section 399.12.5 does two things: 1) it states that an eligible small hydro resource will not lose eligibility if an efficiency retrofit increases the capacity of the resource above 30 MW; and 2) it states that the increase in energy from an efficiency retrofit of an ineligible large hydro resource is eligible for the RPS under certain conditions, despite the underlying ineligibility of the base large hydro resource. The definition should read:

~~(i)(k)~~ **“Eligible renewable energy resource”** means an electrical generating facility that the Commission has determined meets the definition of a “renewable electrical generation facility” in Section ~~399.12 (e)~~~~25741~~ of the Public ~~Utilities~~~~Resources~~ Code or satisfies the conditions of Section 399.12.5 of the Public Resources Code and has been certified as an RPS-certified facility.

2. **Treatment of Amended “Count in Full” Resources.** Page 9 of the July Draft Regulations is intended to implement Section 399.16(d) enacted into law by SBX1 2, stating that certain contracts signed prior to June 1, 2010 shall “count in full” for the RPS. The July Draft Regulations state that if there are any contract amendments that increase the nameplate capacity or expected quantities of annual generation or substitute a different resource, then “...only the amounts or resources agreed to prior to June 1, 2010...” shall “count in full.”

There are two issues here. First, Section 399.16(d) is most appropriately interpreted as implying that the entire “count in full” resource becomes subject to categorization when amended with one of the specific amendments in the law. The July Draft Regulations appear to indicate that the original amount of generation under the contract (if the same resource) would remain as a “count in full” resource. SMUD believes that when one of the pre-June 1, 2010 contracts is amended as mentioned in Section 399.16(d), the entire contract going forward is categorized. SMUD also suggests that the regulations explicitly state what happens to the energy that no longer “counts in full.”

Second, Section 3202(a)(2)(B) and (C) of the July Draft Regulations should be clarified with respect to amendments of the lifetime or term of these contracts. Clause (B) is the main clause detailing what happens with an amendment to a contract, and it would be clearer if this included wording relating to amendments of the term of the contract. Clause (C) modifies Clause (B), and should be altered slightly for accuracy. In sum, Clauses (B) and (C) of the regulation should read:

~~(B) (B) — Any contract modifications or amendments occurring after June 1, 2010, do not increase the nameplate capacity, expected quantities of annual generation from the facility, or substitute a different renewable energy resource for the facility.~~ If contract amendments or modifications after June 1, 2010, increase nameplate capacity or expected quantities of annual generation, increase the term of the contract except as found in 3202(a)(2)(C), or substitute a different renewable energy resource, only the amounts ~~or resources~~ agreed to prior to June 1, 2010, procured prior to the effective date of the amendment shall count in full toward the RPS procurement targets. The remaining procurement must be classified into a portfolio content category and follow the portfolio balance requirements in accordance with Section 3203.

~~(C)~~ The ~~initial~~ term of such procurement contract may be extended if the initial term of the contract specified a procurement commitment of 15 years or more.

3. Usefulness of Section 3202(a)(3). Section 3202(a)(3) of the July Draft Regulations provides a technically accurate implementation of a nuance of Section 399.16(d), but it is one with very minor impact, and its implementation may cause more confusion and complexity than it is worth. It is true that there is an additional potential “type” of resource under SBX1 2, beyond the pre-June 1, 2010 “count in full” resources that met eligibility requirements at the time of contract execution and the post-June 1, 2010 resources that are subject to “categorization.” However, to SMUD’s knowledge, the population of this third type of resource is very small, being limited to distributed generation resources that were not technically eligible per CPUC and CEC decisions at the time. SMUD is not aware of any other RPS resource that was not eligible in the pre-June 1, 2010 timeframe, but is now eligible for the RPS.

In addition to containing very few resources, including this arcane “type” of RPS resource has no material bearing on the RPS. The resources here are eligible, do not technically meet the “count in full” requirements, and yet also do not technically meet the requirements to count toward the portfolio category balance requirements. This is how the July Draft Regulations treat these resources, and while technically accurate, in practice the resources here are identical in material effect on the RPS to “count in full” resources – they count but are not constrained by the category limitations of post-June 1, 2010 resources. However, the July Draft Regulations state that they will be included in the categorized resources, thereby necessitating the complexity of having

categorized resources that count toward the category limits and those that do not, which obviously must be then tracked separately.

In addition, SMUD would contend that these resources – distributed generation such as customer-sited photovoltaic resources – were ineligible for the RPS not because of a specific provision in the law that made them ineligible, but rather due to a convoluted and long-delayed process at the CPUC and CEC to “clear up” the eligibility of RECs and DG. The main and perhaps only technology here – solar photovoltaics – is clearly on its face an eligible renewable technology.

Given all this, SMUD recommends that the CEC drop the complexity and confusion of including the arcane “type 3” resources in the regulations. The CEC can simply determine that distributed PV was by nature eligible for the RPS in these pre-June 1, 2010 installations, but was not included at the time for technical reasons that no longer have meaning. Hence, there would be no real resources in “type 3,” and no need for the complexity and confusion.

4. Remove the New 3203(b)(2)(E): The July Draft Regulations include a new subsection – 3203(b)(2)(E) -- that simply states that electricity from a Category 2 resource cannot be sold back to the facility from which it comes. This appears to be a nod back to a dispute under the prior RPS program as to whether such a transaction constituted an unbundled REC or a “delivered” purchase. However, the issue is no longer relevant under the new RPS program, and the clause should be removed.

Under the old RPS, all energy was to be delivered to California, and there was a significant debate about what transactions constituted unbundled and ineligible RECs, and which did not. The debate centered on this transaction – the purchase of energy and RECs, reselling of the energy directly back to the facility, and associating the RECs with other, “firmed and shaped” delivered energy for RPS purposes. The CEC maintained in its earlier Guidebooks that this transaction was a valid “bundled” firming and shaping transaction, while the CPUC maintained that the transaction was an unbundled REC transaction. While SMUD believes that the CEC was conceptually correct in this debate, the point is now moot and the debate is no longer necessary in the new RPS.

There are now three post-June 1, 2010 categories of resources, and the issue of whether energy is sold back to the generating facility is no longer a salient issue. Category 1 resources are clearly separated, in the new scheme, so there is no chance that a transaction such as this could be found to be a higher valued Category 1 resource. This was the main issue in the past, when there were only two categories of resources – bundled and unbundled. In addition, the distinction between Category 2 and Category 3 resources centers not on what happens to the underlying renewable energy after purchase, but rather on the timing and structure of the substitute energy associated with a Category 2 resource. Category 2 requires this energy to be “incremental” to the POU, and if this is not met per the interpretation of CEC’s regulations, then the transaction becomes Category 3 (the “all other transactions”

category). What happens with the initial renewable energy should have no bearing, as it is unimportant for these category determinations.

Given this, all that the CEC will accomplish by including subsection 3203(B)(2)(E) in the final regulations is an increase in the cost of Category 2 resources without any beneficial effect. Costs will increase any time an option is limited, and here the limitation essentially requires contracting with a separate party in cases where that may not be necessary. Such additional contract requirements are in most cases going to add costs to the transaction. There is no material difference in electricity flows overall, as in any case the underlying renewable electricity will be sold locally – either through the facility or some other intermediary – and the RECs associated with substitute energy per Category 2 requirements. Again, the added part (E) should be removed in the final regulations.

5. Requirements to Adopt Procurement Plans by January 2013 and to File Enforcement Plans with CEC within 30 Days of Adoption: The July Draft Regulations include a requirement that POUs adopt procurement plans by January 2013, and submit such plans to the CEC within 30 days of adoption. SMUD does not object to this requirement, but notes that the regulations are unlikely to be final prior to this date, and notes that a specific date for adopting procurement plans is not found in SBX1 2. SMUD recommends changing the date to a time that will be clearly after the regulations are final.

Also, SMUD notes that there is a new requirement in the July Draft Regulations for POUs to file “enforcement plans” with the CEC within 30 days of adoption. Again, SMUD does not necessarily object to this requirement, but notes that there is no requirement in the law for POUs to file their enforcement plans with the CEC. As required by SBX1 2, SMUD adopted an enforcement plan prior to January 2012, and voluntarily filed this plan with the CEC.

6. Increases in Category 3 Procurement Should Be Allowed When Category 1 Procurement is Lowered. The July Draft Regulations implement a provision of law allowing for the reduction of the portfolio balance requirement for Portfolio Category 1 procurement, pursuant to PUC Section 399.16(e). Section 399.16(e) states that a retail seller may apply for a reduction in the procurement content requirements of “subdivision (c).” This refers to Section 399.16(c), which includes both the requirement that certain minimum percentages of post-June 1, 2010 contract procurement be met by Category 1 procurement, as well as that certain maximum percentages of post-June 1, 2010 procurement be met by Category 3 resources. The July Draft Regulations only address the former requirement.

SMUD believes that this partial implementation of Section 399.16(e) in the July Draft Regulations is in error. The law clearly refers to the Section 399.16(c) as a whole, not just Section 399.16(c)(1), which covers the minimum percentage requirement for Category 1 procurement. The intent is to allow the reduction or “relaxation” of the procurement limitations in the portfolio balance structure under certain circumstances.

A reduction or relaxation of the portfolio Category 1 minimum requirement is clearly envisioned – Section 399.16(e) explicitly limits the potential relaxation here in later compliance periods. However, it is reasonable to also allow the “relaxation” or “reduction of” the limitation on portfolio Category 3 under the law, for the law applies equally to this part of Section 399.16(c). Here, the “reduction of” the limit is implemented by increasing the percentage requirement allowed for this Category. This is what must happen to effectuate a “reduction” in the procurement content requirement in this case, and the CEC errs by not implementing the portion of Section 399.16(e) that refers to this requirement.

To do otherwise sharply limits the application of the law here, which by intent is to allow compliance in a situation when the specific limitations of Section 399.16(c) cannot be met. It makes little sense to ignore the limitation on portfolio Category 3 procurement here, as this is the clearest course to achieve compliance in these limited circumstances. Reducing the percentage requirement for Category 1 procurement may not help if there is little Category 2 procurement available, and the limit on Category 3 procurement is not also “reduced.” The CEC’s “halfway” implementation here in effect blocks the intent of the law, and should be expanded to include a possible reduction in the limit for Category 3 procurement.

7. Reporting Requirements. The July Draft Regulations contain some useful changes from the April Draft with regard to POU reporting requirements. In particular, SMUD appreciates the additional language in Section 3207(b) that explicitly allows POUs to refer to already submitted information or information submitted in other reports, and so avoids the duplication of submitting information more than once. SMUD understands the need for reporting information on the RPS to the CEC, and believes in satisfying the information requirements to our customers and the CEC necessary for proper understanding and oversight of our RPS accomplishments. However, SMUD has the following specific comments on the July Draft Regulation reporting Section 3207:

- Much of the information in Section 3207(b)(1) is static, does not vary from year to year, and so is not needed annually. For example, information about “the year that the POU was established” will not change, so annual submittal of this fact is not necessary. While the number of retail accounts in California will vary annually, it is unclear why this information is necessary in order to identify a particular POU. Since the CEC has detailed information about each POU on its website already, it is unclear why the July Draft Regulations require annual identifying information at all. No such “identifying” information is requested for the more comprehensive compliance reports in Section 3207(c).
- The information requested in Sections 3207(b)(2)(D) and (F) will likely not change from year to year. The regulations should be updated to request this information on an annual basis **only if changed** from the previous year.

- Section 3207(c), for compliance period reporting, should have a statement similar to 3207(b) allowing reference where appropriate to already submitted information, rather than duplication of reporting. SMUD reads the earlier, welcome, relaxation here as only applying to 3207(b), and believes that there may be opportunities for reduced reporting in 3207(c) as well.
- Section 3207(c)(3) seems unnecessary. The POU RPS procurement target will be the same for each POU for each compliance period, as it is defined by the law and the July Draft Regulations.
- Section 3207(c)(7)(a) should be modified. Application of a cost limitation rule may not be so cut and dry that a POU can identify the dollars spent during the compliance period “in dollars.” It would seem that a POU could invoke a cost-limitation rule to avoid a particularly expensive contract, and may have no viable alternative. In this case, there would be no actual dollars expended in the compliance period, but merely costs avoided that would have violated the POU’s cost-limitation rule. Also, since some POU’s have adopted cost limitation rules that involve limits on disproportionate rate increases, translation of the rule to actual dollar impact (“the POU shall report that cost limitation to the Commission in dollars spent...”) may be problematic.
- The July Draft Regulations should explicitly address consolidation of the annual and “compliance period” reporting obligations where appropriate. When compliance period reports are due, on June 1, 2014; June 1, 2017; June 1, 2021; and each June 1 thereafter, POU’s should clearly be obligated to file only one report at the CEC, covering the information required by 3207(b) and (c).

It is important to remember that the statute requires very little of the reporting described in the Draft Regulations. Section 399.30(g) in SBX1 2 requires that POU’s submit four pieces of information annually, concerning contracts signed during the previous year, not the entire gamut of POU RPS procurement. The information required by law is simply: 1) the duration of each contract signed during the year; 2) a description of the resource in such contracts; 3) identification of the contracted facility(s); and 4) the percent of retail sales increase in renewable procurement represented by each new contract. Section 399.30 (l) requires that POU’s annually provide three pieces of information related to RPS compliance and PGC funding in the previous year – the amount of PGC funding spent on renewables, the POU’s resource mix, and the POU’s RPS status for the previous year. This information is already submitted in the existing Power Content Label reporting structure, and should not be separately required here. SMUD also believes that a compliance period report is reasonably implied by SBX1 2.

Thank you again for the opportunity to comment.

/s/

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