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

In the matter of:)	Docket No. 03-RPS-1078 and
)	Docket No. 11-RPS-01
Implementation of Renewables Portfolio)	RPS Proceeding
Standard Legislation)	
)	Docket No. 02-REN-1038
)	Renewable Energy Program
and Implementation of Renewables)	
Investment Plan Legislation)	Comments on Workshop
)	Regarding RPS Procurement
)	Reporting & Verification under
)	SB X1-2
)	
)	October 8, 2012

**Comments of the Sacramento Municipal Utility District
(SMUD) on 2008-2010 RPS Procurement Verification
and SB X 1-2 RPS Procurement Verification**

The Sacramento Municipal Utility District (SMUD) thanks the Energy Commission staff for the opportunity to provide written comments on presentations made by staff at the ***Staff Workshop on 2008-2010 RPS Procurement Verification and SB X1-2 RPS Procurement Verification*** on September 21, 2012. Again, SMUD appreciates the thoughtful approach and the hard work by staff toward verification and reporting on compliance with SB X1-2.

SMUD has no comments with respect to plans for verification of retail seller procurement from 2008-2010, prior to the first compliance period for SB X1-2.

While SMUD generally supports staff's proposals, SMUD believes that staff should consider more fully the real world circumstances of regulated parties when drafting verification and reporting rules. For example, staff has proposed that publicly-owned utilities (POUs) may only count generation from facilities that were approved and certified under RPS rules in place for retail sellers when the original procurement or ownership agreement was executed by a POU. SMUD agrees that RPS eligibility should be a condition of counting historic carry over. However, SMUD would remind staff that because POUs were responsible for establishing and complying with their own Public Utilities Code Section 387 programs, they were not as attentive to meeting every particular of the rules in place for retail sellers as those rules evolved from 2004 onward. A fairer standard by which to measure historic carryover would be substantial

compliance with rules contained in the CEC's *RPS Eligibility Guidebook*, where applicable.

SMUD is also concerned that the Energy Commission is considering verification protocols for out-of-state Portfolio Content Category 1 (PCC1) products that are unnecessarily complicated. If adopted, the CEC's verification protocols will interfere with electricity procurement practices and raise implementation and administrative costs of the RPS unnecessarily. SMUD recommends that such resources should be classified using final NERC e-tags schedules. SMUD believes that applying this commercial settlements practice is more consistent with legislative intent that defines the three portfolio content categories.

A. The Energy Commission Should Apply a Substantial Compliance Test for Purposes of Calculating Potential Historical Carry Over.

In its proposed Section 3205(a)(5) of the Pre-Rulemaking Draft 33 Percent RPS Regulations, staff has proposed that POUs may only count procurement that was RPS-eligible under rules in place for retail sellers at the time of procurement, with a limited exception that generation from such facilities need not have been tracked in WREGIS. This exception illustrates SMUD's point that because requirements applicable to retail sellers were not applicable to POUs, POUs like SMUD that intended to follow the CEC's eligibility requirements would be unable to follow each requirement for RPS eligibility.

For example, in the first *Renewables Portfolio Standard Eligibility Guidebook*, the Energy Commission encouraged POUs to meet their Section 387 RPS obligations through procurement from RPS-certified facilities, but did not require it. Indeed, the Energy Commission interpreted applicable law as excluding out-of-state facilities under contract with POUs from applying for RPS certification. So, compliance with each Guidebook requirement may not have been feasible in every instance. Similarly, in the second *Renewables Portfolio Standard Eligibility Guidebook* (March 2007), parties interested in certifying hybrid facilities using a combination of biomass and fossil fuels in excess of the *de minimus* were invited to propose an appropriate tracking method to measure the renewable fraction of generation. However, if an out-of-state seller or POU buyer was not allowed to apply for certification because the facility did not have a contract with a retail seller or the California ISO, it was not expected that the POU would have proposed an appropriate tracking methodology. These examples are illustrations why the Energy Commission should make some allowances for POUs who complied with the substance, if not every detail, of the rules in place for retail sellers. SMUD established a policy early on of meeting its Section 387 RPS goals with eligible renewable energy resources. As stated in its *Renewable Energy Resources Eligibility Guidebook* (October 2008):

SMUD's RPS eligibility requirements are largely based on the California Energy Commission's (CEC) *Renewables Portfolio Standard Eligibility Guidebook*, January 2008 and *Overall Program Guidebooks*. SMUD eligibility requirements

essentially follow the CEC requirements with some exceptions that will be discussed below.

SMUD's eligibility requirements differed mainly in the areas of baseline resources and distributed generation because of specific difference between POU's and retail sellers. However, with those exceptions, SMUD closely followed CEC requirements, and in particular delivery requirements and procurement of only bundled renewable energy. SMUD's good faith efforts to procure only eligible renewable energy resources, and carry forward only those resources, should be credited so long as SMUD substantially complied with rules intended for retail sellers.

B. Out-of-State PPC1 Resources Should Be Verified with Final NERC E-tag/Schedules.

SBX 1 2 imposes a special condition on the importation of renewable energy into California, not required of in-state resources, for that electricity to count as PCC1. It requires that electricity from an out-of-state renewable energy resource must be scheduled "without substituting electricity from another source." (Pub. Util. Code § 399.16(b)(1)(A)) The concept of "substitution" being an open ended one, inspired additional legislative language to remove "real-time ancillary services" from the prohibition on substitute energy:

The use of another source to provide real-time ancillary services required to maintain an hourly or subhourly import schedule into a California balancing authority shall be permitted, but only the fraction of the schedule actually generated by the eligible renewable energy resource shall count toward this portfolio content category.

Thus, the Legislature clearly did not want the common commercial practice of maintaining hourly or sub-hourly schedules with non-renewable ancillary services to disqualify electricity imported from eligible facilities from PCC1 status. However, by use of the phrase "only the fraction of the schedule actually generated by the eligible renewable energy resource shall count toward this portfolio content category" the Legislature makes clear that ancillary services from non-renewable resources should not count. This policy is straightforward enough and is in keeping with the statute's general intent of qualifying out-of-state renewable resources if they are scheduled into California.

However, CEC staff has taken the policy of differentiation between imports of eligible renewable energy and non-renewable ancillary services a step further. During the workshop, Staff informed stakeholders that this straightforward policy "requires substantially more verification documentation". In particular, staff proposes to verify imported quantities of electricity from eligible renewable resources against the *hourly* schedule from *hourly* meter reads. Staff has made clear that only capacity measured up to but not exceeding the planned schedule *in any hour* will count as the "fraction of

the schedule actually generated by the eligible renewable energy resource". Their presentation states:

Legislation effectively requires an annual hourly analysis of meter and schedule data to determine what portion of the generation met the schedule, was under the schedule or was over the schedule.

But the legislation does not require this interpretation at all. The clause in question reads "only the fraction of the schedule actually generated by the eligible renewable energy resource" shall count. It does not read "only the fraction of the *hourly* schedule actually generated by the eligible renewable energy resource" shall count. Staff has taken the words "hourly or subhourly import schedule" from a separate clause earlier in the sentence and read those words into the next clause, thus changing the meaning of the latter clause. In fact the Legislation does not "require", effectively or not, an hourly analysis of meter and schedule data in order to determine "the fraction of the schedule actually generated by the eligible renewable energy resource." It is the fraction of renewable energy actually generated as compared to the fraction of non-renewable ancillary services used to balance that energy that the Legislature seemed to be concerned about, not limiting the amount of renewable energy if it exceeded the schedule in any one hour period. If that was the Legislature's intent, it would have written "...the fraction of the *hourly* schedule actually generated", but it did not.

A distinction between qualifying renewable energy and non-qualifying non-renewable is consistent with the policy stated elsewhere in § 399.16(b)(1)(A). It is also consistent with the policy extant in § 399.16(b)(2), which places into PCC2 "firmed and shaped" resources providing incremental electricity and scheduled into California. The PCC2 category in § 399.16(b)(2) appears intended to capture a much different transaction than PCC1. PCC2 is intended to identify transactions that firm intermittent renewable energy of much greater amounts over longer periods of time, such as wind and solar. This logic is supported by the CEC's own verification requirements, since energy in PCC2 can be firmed any time in the same calendar year. This is a lot different than firming up an hourly schedule with ancillary services. By creating an hourly verification requirement, which disqualifies energy simply because energy is metered above and below the flat schedule at various times during the day, means that CEC staff thinks of firming hourly schedules as not much different than firming yearly schedules. Such an interpretation is not at all consistent with the way PCC2 is defined in the statute.

A better scheduled import quantity to use is the "final scheduled" quantity as reflected in the final e-tag associated with the schedule. This will capture any changes made after the conclusion of a delivery to reflect adjustments made by balancing authorities to the e-tag to reflect actual deliveries of renewable energy into the state. SMUD proposes that on a monthly basis, the purchasing entity in California only claim as PCC1 the lower quantity of the import schedules for that renewable or the total month's renewable output of the generator. Any renewable energy in excess of the total month's schedules, if purchased by the California entity, would be tradable RECs, classified as PCC3.

This is reasonable in that during the month, in any hour in which the renewable generator overproduces energy relative to the schedule, it is delivering its energy as imbalance energy to the host balancing authority, meaning that the host balancing authority was able to reduce its own generation needed for the remainder of its obligations. In any hour in which the renewable generator under-generates relative to the scheduled transaction, then the host balancing authority is slightly over generating relative to its other obligations in order to keep the delivery schedule constant during the hour. On a monthly basis the net difference between the schedules and the actual energy output of the renewable generator reflects the net ancillary service energy that the host balancing authority had to provide (or accepted from the renewable generator).

C. Nothing in SB 2196 Requires the Energy Commission to Develop a Significant New Tracking System for Verifying Biomethane Procurement.

Energy Commission staff suggested at the September 21, 2012 verification workshop that SB 2196 requires new verification protocols for biomethane procurement. While SB 2196 requires that all sellers and purchasers of biomethane comply with a tracking system similar to that in place for tracking renewable generation, this system does not have to be significantly different than tracking already occurring for biomethane.

Currently, biomethane procurement and contracts are tracked using gas meter reads and pipeline contracts from the source of the biomethane to the designated generator in which the biomethane is used. Biomethane procurers can provide these meter reads and contract path documents to “back up” their biomethane use. The Energy Commission can check this information through a spreadsheet like that used in the Interim Tracking System. New out-of-state biomethane contracts are extremely unlikely due to SB 2196. Hence, a significant new biomethane tracking system such as WREGIS will have limited application and will not be a cost-effective use of staff and stakeholder time.

In order for biomethane to be eligible for the RPS, the Energy Commission already requires that the electricity generator where it is used be certified. Certifications include signed attestations from the buyer (designated facility owner), the seller (source of biogas), and the deliverer (marketer that arranges pipeline delivery) that the biomethane is eligible, produced, scheduled, and delivered as required. Tracking of resulting generation is calculated based on the fraction of biomethane fuel and this generation is already reported monthly in WREGIS. WREGIS requires calculation of fuel used and requires maintenance of data for such calculations for two years. This data is subject to audit by WREGIS.

Biomethane contractual procurement is tracked by monthly supplier invoices, meter reads, and pipeline reports. These show the metered volume of gas, the source produced, scheduled and shipped, and the volume of gas used at the designated facility. Gas production and designated facility operational changes can lead to monthly differences that are trued up over the year using standard industry practices to ensure

that gas produced always equals gas used. Biomethane contracts include right to audit invoice data.

In addition, there is now the added structure of GHG reporting and regulation. ARB treats certain combustion of biomethane as having no GHG compliance obligation under AB 32's Cap and Trade, like solid fuel biomass, since the resulting CO₂ is not geologic in origin, so is not "incremental" to the atmosphere. Similar to other renewables, there is a GHG benefit from displacement of natural gas use.

For this treatment, ARB generally requires that the biomethane be "additional", not simply a "shuffling" of a biomethane resource from outside the capped region. The fuel must be from an "increase" in fuel production, or a new use of the fuel for energy production – where rather than venting or flaring, electricity is produced.

Facility operators must report and verify biomethane use, with documentation including invoices, shipping reports, allocation and balancing reports, storage reports, and in-kind nomination reports. All contracts must be made available for verifier or ARB review to demonstrate the receipt of eligible biomethane. Independent verifiers under Cap and Trade must examine all contracts, nomination agreements, invoices, scheduling details, allocation procedures, transportation reports, storage reports, and any fuel purchase and balancing reports, tracking from the producer to the reporting entity, with reasonable assurance that the reporting entity is receiving the identified biomethane. Verifiers must ensure any discrepancies in the fuel volumes, heat values and/or energies evaluated as a material misstatement for the reporting entity, which must be corrected to avoid penalties.

D. The Energy Commission Should Take Care to Present and Discuss the Portfolio Content Category Requirements as Only Applying to Contracts Signed After June 1, 2010, and Not to All RPS Procurement.

At the verification workshop, Energy Commission staff provided a slide that describes the minimum and maximum procurement requirements over time for PCC1 and PCC3. The slide does not mention that the requirements only apply to procurement from contracts signed after June 1, 2010, and thus gives the impression that the requirements apply to all RPs procurement. As mentioned in the workshop, staff should strive to avoid confusion in the RPS marketplace by accurately and consistently describing the PCC requirements.

E. The Energy Commission Should Not Exclude Historical Procurement from Contracts Signed After June 1, 2010 When Determining Potential Historical Carry Over.

At the Verification Workshop, Energy Commission staff provided a slide that indicated that only procurement from contracts signed prior to June 1, 2010 would be included in the verified calculation of potential historical carryover. There is no reason to exclude any pre-2011 procurement from these contracts from the calculation. While these

contracts will be subject (in most if not all cases) to the PCC determinations for energy generated after January 1, 2011, any generation prior to that date is simply historical procurement, and should be included in the potential carryover calculation.

F. The Energy Commission Should Revise the Treatment of PCC2 Resources in the POU RPS Regulations and the Verification Process.

In SMUD's comments on the Draft RPS Regulations filed in August, 2012, we mentioned that PCC2 resources should not require substitute electricity to be provided in the same year in which the RPS generation occurs. We also indicated that the compliance period was a better timeframe for requiring the firmed electricity, rather than annually. In order to simplify verification and RPS procurement, SMUD encourages the Energy Commission to revisit the RPS regulation comments and structure the regulations and subsequent verification as simply as possible.

Again, SMUD appreciates the opportunity to submit written comments on staff's proposals for reporting and verification of RPS procurement under SB X1-2.

/s/

WILLIAM W. WESTERFIELD, III
Senior Attorney
Sacramento Municipal Utility District
P. O. Box 15830, M.S., B406, Sacramento, CA 95852-1830

/s/

TIMOTHY TUTT
Government Affairs Representative
Sacramento Municipal Utility District
P. O. Box 15830, M.S. B404, Sacramento, CA 95852-1830

cc: Corporate Files