STATE OF CALIFORNIA
BEFORE THE CALIFORNIA ENERGY COMMISSION

In the matter of:	)	Docket No. 13-RPS-01
	)	
Enforcement Procedures For The Renewables Portfolio Standard For Local Publicly Owned Electric Utilities	)	Comments on the Proposed Regulations CEC 300-2013-002-15Day
	)	
	)	May 6, 2013

Comments of the Sacramento Municipal Utility District (SMUD) on the Proposed Regulations – 15-Day Language

Thank you for the opportunity to provide comments on the 15-Day regulatory language covering ***Enforcement Procedures For The Renewables Performance Standard For Local Publicly Owned Electric Utilities (15-Day Language).*** SMUD thanks the CEC staff and Commissioners for their hard work on these regulations and associated guidebooks, appendices, and forms for implementation of the 33% RPS under Senate Bill X1 2 ("SBX1 2").

SMUD continues to strongly support many aspects of the proposed regulations found in the 15-Day Language package. Of the changes in the 15-Day Language, SMUD strongly supports the change to consideration of historical carryover RECs, allowing these to be retired within 30 days of the effective date of the RPS regulations, rather than requiring retirement within 36 months of generation. SMUD stands ready to meet this requirement as we proceed with determining the amount of historical carryover that will be allowed under the regulations.

SMUD cannot support the change to Section 3203(a)(1)(C) that requires a comparison on a hourly basis of generation and schedule for some Category 1 resources, with the hourly minimum of these two amounts certified as Category 1 resources. SMUD continues to believe that this calculation is complicated, unnecessary, and will lead to adverse incentives in the market to "over-schedule" these resources, along with higher costs for RPS compliance and administration.

SMUD supports the CMUA comments on the Proposed Regulations, including the response to the TURN and CalWEA comments filed on May 1st. These stakeholders objected in fairly sharp terms to the removal in the 15-Day

Language of the provision (in Section 3206) limiting the generation of less than 10-year contracts when calculating excess procurement. SMUD does not believe that the CEC needs to change course on this provision in response to TURN and CalWEA, but should the CEC do so, SMUD strongly contends that procurement that meets the requirements of Section 3202(a)(2) must "count in full" and thereby cannot be subtracted prior to calculation of excess procurement. In fact, logically the "count in full" treatment here should apply to procurement that "… meets the criteria in Section 3202(a)(2) or Section 3202(a)(3)."

The TURN and CalWEA suggestion that POUs would go out and sign up a bunch of short term contracts that would subsequently limit long term procurement is baseless. This contention is not supported by any historical practice of POU procurement. POUs look for the lowest-cost resources that fulfill their RPS and reliability needs, including the need for a portfolio of resources to reduce risk, and have and would tend to favor lower-cost, long-term contracts to meet RPS requirements. The vast majority of POU historical contracts have terms of 10 years or longer, and such procurement occurred without the prohibition advocated by TURN and CalWEA. In addition, POUs in general have equaled, if not exceeded, the RPS compliance record of retail sellers.

In addition, the CEC's change here recognizes the flawed thinking behind the requirement. The law allows less than 10-year contracts to be procured, and some procurement of such inexpensive contracts will likely occur. Once procured, however, the treatment of the contracts with respect to carryover provides an incentive to "manage" additional procurement, if possible, to avoid the loss of value from disallowed carryover. This can be done by keeping procurement to a level where compliance is assured (the short-term contracts count for that), but carryover is minimized. Requiring that less than 10-year contract generation be subtracted from carryover calculations is not a well-targeted policy, and the CEC was correct to remove this requirement for POUs in the 15-Day Language.

A. Remove The 15-Day Change That Refers To Hourly Calculations For Scheduled Category 1 Resources

The 15-Day Language includes the following highlighted changes in Section 3203(a)(1)(C):

> "If there is a difference between the amount of electricity generated within an hour and the amount of electricity scheduled ~~and delivered~~ into a California balancing authority within that same hour, only the lesser of the two amounts shall be classified as Portfolio Content Category 1."

SMUD requests that the added words be removed from the proposed regulations. SMUD has contended that the law does not require this hourly

comparison and minimization, but has made these contentions mainly in the Seventh Edition Guidebook process, not this enforcement proceeding. SMUD read the earlier 45-day Proposed Regulations as allowing the treatment that the CEC now proposes in the 15-Day Language, but equally as allowing the alternative treatment that SMUD advocates. SMUD believes that it is more appropriate to deal with this complicated verification-related issue in the Guidebook process.

SMUD remains open to being convinced by the CEC that SMUD's position here is mistaken, but also remains hopeful of convincing the CEC that SMUD's position is a viable alternative interpretation that reduces cost and complexity and removes inappropriate incentives to over-schedule these kinds of resources, with adverse market impacts. This discussion is more feasible in the Guidebook process than in a formal regulatory proceeding.

B. A Fair Process Requires Reconsideration of Several Aspects Of the Proposed Regulations

SMUD continues to have significant problems with several parts of the 15-Day Language that were not modified from the earlier 45-day Proposed Regulations. SMUD urges the CEC to consider additional changes as requested below and as found in parties' comments filed on April 17, 2013. There are two main reasons for this consideration.

First, the CEC's stated reason for postponing the May 8th adoption of the 15-Day Language is "… *to provide the Energy Commission more time to consider written comments on the 15-day language changes for the Proposed Regulations, which are due on May 6, 2013."* If the two days from May 6th to May 8th were insufficient time for consideration of comments on the 15-Day Language, then the two days between April 17th, when the 45-day comments were filed, and April 19th, when the CEC posted the 15-day revisions, should also be considered insufficient – particularly since the scope of comments on the 45-day language was much broader. SMUD contends that the CEC did not allow sufficient time to consider the 45-day comments prior to posting the 15-Day Language.

Second, while SMUD agrees that collaboration with the CPUC in implementing the RPS is necessary and desirable, SMUD also believes that the timing of and implementation of that collaborative process has, in some cases, been detrimental to the full consideration of the interests of POU stakeholders in the CEC enforcement proceeding. While in some instances the CEC has found a way to propose slightly different positions from those decided by the CPUC, in other cases the fact that the CPUC has already made a particular decision in the retail seller arena seems to be used as justification to follow the same course for POUs. SMUD does not believe that this is how the dual agency collaboration should proceed.

POUs are not retail sellers and are not regulated by the CPUC with respect to the RPS. It is unfair to POUs to have RPS enforcement policy essentially decided at the CPUC, prior to the beginning of any formal CEC process, which is where these decisions should be made for POUs. Even in cases – perhaps even *especially* in cases – where stakeholders appear to agree that there should be consistency between procedures for retail sellers and for POUs, the CEC must make these decisions based upon its own judgment and record with respect to POUs, not the result of a CPUC process that has already yielded decisions that apply to retail sellers. If, using this process, the CEC comes to a different decision than the CPUC based upon substantial evidence, and yet consistency between the two agencies is desired on an issue, then collaboration should be used to achieve the desired consensus in a process subsequent to the two agencies' independent consideration of and decision upon the issue.

Hence, SMUD encourages reconsideration of the recommendations found in SMUD's comments filed on April 17th, including those summarized briefly below.

1. Change Course Regarding Regulatory Treatment Of Portfolio Content Categories: SMUD's urges the CEC to change course and interpret SBX1 2 to allow RECs to carry a Category 1 and Category 2 attribute. As described in great detail in SMUD's comments on the 45-day Proposed Regulations, there are numerous advantages to this path. First, the law explicitly imbues eligible resources with Category 1 and Category 2 attributes. Second, the statutory language that defines a Category 1 or Category 2 product does not require bundled procurement of energy and RECs. Third, the definition of a Category 3 product does not require that all unbundled RECs be placed in that category, and indeed strongly implies the opposite. There are other policy and practical reasons to change paths here as well.

This is an area where differences between retail sellers and POUs clearly have not been given sufficient weight in the CEC process. The CEC has several times been asked to consider the typical POU procurement of RECs from SB 1 customers, which is sharply different than how procurement works in the retail seller arena. However, consistency with the early CPUC decision here appears to have trumped this difference.

SMUD repeats its request that the CEC recognize that Category 1 procurement is not required to be "bundled" initially, Category 2 RECs are already implicitly procured "unbundled" (and then matched with scheduled energy), and that distributed generation within California is clearly a Category 1 resource. The CEC should remove Sections 3203(a)(3) and Sections 3203(b)(4), along with any other language that restricts appropriate unbundled RECs from acquiring or retaining their Category 1 or 2 status, and revise Section 3203(c) to reflect these changes.

2. Allow Full Accounting Of Historical Procurement In The Calculation Of Historical Carryover: SMUD continues to believe that there is no valid reason to exclude procurement from contracts signed between June 1, 2010, and January 1, 2011, from being applied to the procurement target in 2010. While this procurement does not meet the "count in full" criteria of being signed prior to June 1, 2010, there is no valid reason for the CEC to state that such procurement cannot be applied to an entity's procurement target in 2010, for purposes of calculating historic carryover. It is only the actual historic carryover itself that is required to come from contracts signed prior to June 1, 2010, not all historic procurement. Not allowing application of such procurement to the target (established as 20% in the Proposed Regulations) leaves this procurement in limbo – it cannot be carried forward and yet cannot apply to the historical target.

3. The CEC Should Allow Procurement Of A REC For Compliance Period That Precedes The Date Of Generation Underlying The REC: SMUD agrees that the statute does not allow for retirement of a REC before the date of generation, but continues to contend that the statute does not prohibit retiring a REC for compliance in a previous compliance period. Such a REC would be retired after its generation, but designated for a just-passed compliance obligation. This would allow a path to compliance for an entity that inadvertently came up short on compliance in a period due to unforeseen circumstances to procure RECs generated in the following compliance period. In practical terms, the entity can only use this path prior to filing its compliance report with the CEC following the compliance period.

4. Increases in Category 3 Procurement Should Be Allowed When Category 1 Procurement Is Lowered: SMUD continues to believe that the CEC can and should allow for Category 3 procurement requirements to be reduced as well as Category 1 procurement requirements. Section 399.16(e) in SBX1 2 allowed for the reduction of a procurement content requirement of subdivision (c). Category 3 procurement requirements are maximums, and a reduction of those requirements then logically must be thought of as reducing the restriction, or allowing the maximum to be raised. Category 1 and Category 3 minimums and maximums appear to be "paired" in the law, changing together with increased minimums and reduced maximums moving from compliance period to compliance period. Hence, if the Category 1 requirement is modified – the minimum requirement is reduced here, it logically should be matched with a reduction in the restriction on Category 3 procurement – and reducing this restriction means that the maximum requirement is raised.

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Thank you again for the opportunity to comment.

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

/s/

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TIMOTHY TUTT
Program Manager, State Regulatory Affairs
Sacramento Municipal Utility District
P.O. Box 15830, M.S. A404, Sacramento, CA 95852-1830
cc: Corporate Files