STATE OF CALIFORNIA
BEFORE THE CALIFORNIA ENERGY COMMISSION

In the matter of:	)	Docket No. 11-RPS-01
	)	
	)	SMUD Comments On:
Developing Regulations and	)	*Staff Workshop on 2001-2010 RPS*
Guidelines for the 33 Percent	)	*Historic Carryover Verification*
Renewables Portfolio Standard, and	)	
related matters	)	September 1, 2015
	)	

Comments of the Sacramento Municipal Utility District: Historic Carryover Verification

Thank you for the opportunity to provide comments on the proposed verification of SMUD's Historic Carryover (HCO) claim. SMUD filed for HCO in the amount of 1,219,384 RECs in December of 2013. SMUD has appreciated the dialogue with California Energy Commission (CEC) staff over the last year and a half to verify SMUD's historic procurement of renewable energy prior to the beginning of the 33% Renewables Portfolio Standard (RPS) on January 1, 2011. CEC staff has currently verified 1,050,968 MWh of SMUD's HCO claim.

SMUD understands and supports the basic HCO methodology contained in the RPS regulations for Publicly Owned Utilities (POUs), which treats POU procurement prior to 2011 to the same rules that retail sellers followed during that period. SMUD recognizes that this equivalency with retail seller procurement is an important principle.

With respect to SMUD's specific HCO procurement, the CEC staff is proposing to disallow 149,568,038 kWh of SMUD's 2004-2010 procurement, while applying a different methodology to establish SMUD's 2001 "baseline". As SMUD explained in the recent workshop:

- The CEC is inconsistent in the application of eligibility rules to 2004 through 2010 procurement and SMUD's baseline procurement. The disparate treatment appears to be arbitrary and has a significant impact on the amount of SMUD's HCO.

- The CEC has incorrectly disallowed procurement from SMUD's Avista contract for the first three months of the contract (December 2006 through February of 2007) on the basis that this procurement was "firmed and shaped". SMUD contends that the procurement was not "firmed and shaped" and, in fact, met the express eligibility requirements in place in the applicable RPS Guidebook.

SMUD requests that the CEC apply consistent data requirements to SMUD's baseline 2001 procurement and 2004-2010 procurement, recalculate SMUD's baseline, and accept, rather than disallow, SMUD's good faith procurement of renewable generation under the Avista contract from the beginning of the contract.

A. Baseline Procurement Should Be Calculated Pursuant to the Eligibility Requirements of the RPS Eligibility Guidebook Adopted on April 21, 2004 ("RPS Guidebook (First Edition)")

In the proposed verification results of SMUD's HCO procurement presented by CEC staff at the workshop, the full amount of SMUD's renewable procurement in 2001 was accepted to establish SMUD's "baseline". During the verification process leading up to the workshop, CEC staff had requested e-tag proof of delivery for the 2001 procurement from SMUD's Snohomish contract. SMUD tried to provide the e-tags, but found they were unavailable 14 years after the actual procurement (it is not clear to SMUD that e-tags were ever available for 2001). Consequently, CEC staff at one point proposed to disallow SMUD's 2001 Snohomish procurement due to lack of e-tag documentation. The result of the CEC's currently proposed acceptance of 2001 out-of-state generation, ***without*** requiring e-tag proof of delivery, contrary to the delivery requirements of the RPS Guidebook (First Edition), reduces SMUD's potential HCO significantly.

The CEC's HCO instructions in 2013 provided that any procurement from contracts signed prior to the first Guidebook in 2004, such as Snohomish, would fall under the requirements of that Guidebook. In addition, the HCO Frequently Asked Questions posted on the CEC's website[1] state quite clearly that:

> 2. **Other than the CEC-RPS-HCO reporting form, what documentation does a POU need to submit as part of a complete historic carryover report?**
>
> A: A POU must submit copies of all contracts and ownership agreements associated with procurement claims made on the CEC-RPS-HCO form. A POU must also submit a completed CEC-RPS-TRACK form and/or WREGIS report that includes all claims, per facility per generation month, made in the Procurement Detail tab of the

[1] See): http://www.energy.ca.gov/portfolio/pou_rulemaking/2013-RPS-01/2013-12-24_HCO_FAQs.pdf.

CEC-RPS-HCO form. A WREGIS report is required for any REC claims that are tracked in WREGIS. All RECs not tracked in WREGIS must be reported using the CEC-RPS-TRACK form.

For any claims from out-of-state facilities, a POU must submit a WREGIS e-Tag report for any e-Tags available in WREGIS. For any e-Tags not available in WREGIS, the POU must submit a CEC-RPS-eTag form. See FAQ #7 above for more information. (Emphasis added).

A POU must submit a signed attestation for each submitted form and WREGIS report.

3. **In cases where the contract or ownership agreement with a facility was executed prior to the beginning of the RPS, or the adoption of the first guidebook, which guidebook applies to historic carryover claims from this facility?**

A: ***Contracts and ownership agreements executed before the adoption of the first RPS Guidebook must demonstrate compliance with the first RPS Guidebook adopted by the Energy Commission, dated April 2004.***

The first RPS Guidebook, then, should govern procurement from the Snohomish contract, which was executed prior to the beginning of the RPS. That guidebook requires the following with respect to delivery of energy from out-of-state facilities:

"The following deliverability requirements were developed in consultation with CA ISO. These requirements must be satisfied for an out-of-state facility to qualify for the RPS or SEPs.

1. The facility must engage in an interchange transaction with the CA ISO to deliver the facility's generation to the market hub or substation in the CA ISO control area designated by the procuring IOU. In accordance with the policies of the North American Electricity Reliability Council (NERC), the interchange transaction must be tagged as what is commonly referred to as a "NERC tag," which requires, among other things, that information be provided identifying the Generation Providing Entity, the "source" or "Point of Injection", the physical transmission path for delivery, the contract or market path, the location to which the electricity will be delivered to ("sink" or "Point of Withdrawal"), and the Load Serving Entity responsible for the consumption of electricity delivered.

In other words, this first RPS Eligibility Guidebook requires NERC e-tag proof of delivery for procurement from out-of-state resources. The CEC has requested, and SMUD has provided, e-tag documentation of delivery for 2004-2006 procurement under the Snohomish contract. NERC e-tag delivery requirements should be consistently applied.

The CEC seems to be saying that where e-tags are required for baseline procurement, no e-tag is sufficient, while the first three months of Avista procurement are being disallowed because the available e-tags do not bear the facility IDs in the correct part of the e-tag. If e-tags are a delivery requirement for eligible RPS procurement, then an e-tag with enough information on it to confirm delivery should be sufficient, while no e-tag should clearly be insufficient.

SMUD requests that e-tag delivery requirements be applied in a reasonable uniform manner.

B. Eligibility Of First Three Months Of Avista procurement

The CEC staff has potentially disallowed 39,600,000 kWh from 2006 and 103,973,000 kWhs from 2007 because of "outstanding issues regarding electricity delivery verification." This procurement involves one contract with Avista Utilities for renewable generation from several RPS-eligible resources within Avista's renewable portfolio. CEC staff has indicated that the potential disallowance is because the procurement appears to be a "firmed and shaped" contract transaction, which staff indicates was not eligible until adoption of the March, 2007 RPS Eligibility Guidebook ("March 2007 Guidebook"), which implemented a provision of SB 107 that allowed energy delivery at a different time than generation. While that provision is consistent with allowing procurement to be "firmed and shaped", the law does not use these words.

CEC staff have also stated that the e-tags that SMUD provided to document delivery for the period did not list the renewable resource(s) as the source on the tags, and that such a listing was required until the March 2007 Guidebook. However, SB 107 did not contain wording explicitly allowing delivery from a "system" rather than a specific source.

1 – The Avista Contract Was Not "Firmed and Shaped": SMUD contends that the Avista contract was ***not*** a "firmed and shaped" contract. The RPS Guidebook applicable when the Avista contract was executed was published in April 2006 (Pub. No. CEC-300-2006-007-F). That Guidebook ("2006 Guidebook") does not define "firmed and shaped" contract transactions, and indeed makes no mention of firming and shaping at all. The controlling "rule" that did exist at the time was placed in statute by SB 67 (Bowen, 2003), which required a demonstration of delivery of "energy" to the retail seller or the CA ISO (i.e., California). The 2006 Guidebook reflects that law by establishing protocols for demonstrating delivery of energy from out-of-state renewable facilities to California. SMUD's Avista contract did exactly that. SMUD has provided the required e-tag information, including sample e-tags, to demonstrate delivery of energy under the Avista contract coinciding with the generation from the RPS-eligible facilities.

The Avista contract was not a firming and shaping contract as that practice is commonly understood. The Avista generation was scheduled and delivered in real time, as that generation occurred at the renewable facilities referenced in the contract and listed on the e-tags. There was no separate transaction to firm the energy from the five power plants listed in the contract, as those facilities generated more than enough eligible renewable energy to deliver the around the clock firm power described in the contract.

The only difference in the Avista procurement and the standard paradigm of scheduling from a single plant is that the renewable energy was procured from a suite of five eligible resources, rather than one plant. The renewable energy generated by the five plants went into the Avista system and then was scheduled to California. Had the contract been for generation from a single renewable plant in the Avista system, that plant's generation would have entered the Avista transmission grid and been scheduled to California the very same way.

The electrons "delivered" to California from that single source are no more traceable to a single facility in a given hour than they would be to multiple facilities. This will always be the case, unless a radial line is laid from source to sink, which of course is infeasible.

2 – The Avista Contract Met the Requirements of the 2006 Guidebook: SMUD contends that procurement under the Avista contract fully met the eligibility requirements in place from the beginning of the contract, including that the Avista contract fully met the delivery requirements listed in the 2006 Guidebook.

The pertinent question is whether SMUD has demonstrated delivery of its eligible renewable generation to California, as required by law, and according to rules in the 2006 Guidebook. The 2006 Guidebook provided the following general requirement for out-of-state generation:

> 1. The generation must be from a facility that:
>
> c) Demonstrates delivery of its generation to an in-state market hub or in-state substation located within the CA ISO control area of the WECC transmission system (or located anywhere in California if applicable CPUC rules allow delivery outside CA ISO) [p. 18-19]

More specifically, the 2006 Guidebook listed six delivery requirements that must be met, including:

> 1. The facility must either … engage in an interchange transaction with another control area operator to deliver the facility's generation to an in-state location that satisfied applicable CPUC rules for delivery location… [p. 20]

2. The owner of the eligible facility shall register the facility as a unique Source with NERC. This Source shall be used on NERC transaction tags for all eligible energy deliveries. [p. 20]

… and…

4. The facility must submit for and receive acceptance of a NERC tag between the CA ISO and the operator of the control area in which the facility is located. [p. 21]

SMUD's contract with Avista meets these three requirements.[2] The contract required delivery to "COB North to South" of 50 MW of renewable energy (raised to 75 MW within weeks, as allowed by mutual agreement in the contract) from among five biomass and/or small hydro RPS-certified facilities, 24 hours a day, seven days a week. The contract provided that Avista would "obtain NERC Identification numbers for the Renewable Resources as required for certification by the California Energy Commission" and would follow WECC scheduling requirements. The contract also provided that buyer would make a special notation on the NERC e-tags identifying "the power scheduled as renewable generation from the Renewable Resources."

In accordance with the contract language and CEC rules, renewable energy from these five facilities was scheduled and delivered from Avista's control area to California. The renewable energy was scheduled and delivered in real time, around the clock, to COB, an in-state market hub approved under CPUC rules. Each of the five eligible facilities bore NERC ID numbers as required. NERC e-tags that SMUD has available from December 2006 through February 2007 each include either the NERC names of the five sources, or in most cases the RPS ID numbers from these eligible renewable sources.

The 2006 Guidebook does not require that the eligible renewable facility be noted in the "source" field on the e-tag, but rather that the unique NERC source "… shall be used on NERC transaction tags for all the eligible energy deliveries." It is appropriate to include a note in the e-tag to document the contractual source of delivered procurement – the generating facility or facilities from which the generation was contractually procured – and the Avista tags do note these sources. However, listing a generator as the "source" in an e-tag does not and cannot imply that the e-tag traces the generation within the host balancing authority back to the plant busbar. That is not industry practice. A NERC e-tag does not trace the contractual flow of energy ***within*** a balancing authority. The e-tag merely traces contractual delivery of generation ***between*** balancing authorities. Listing the contractual generator in the comment, miscellaneous, or

[2] The Avista Contract also meets, or would have met, the other three criteria, which cover providing the CEC with a NERC identification during certification, and two annual verification requirements.

contract field is physically and functionally equivalent to listing the generating facility itself in the source field. There is no practical difference.

3 - January and February 2007 Avista Procurement Should Be Treated Equivalently to That From March 2007 Onward: Even if the CEC does not accept SMUD's argument under 1) and 2) above, SMUD continues to contend that generation from January and February 2007 should be treated equivalently to procurement for the remainder of the Avista contract and accepted as eligible procurement for the HCO calculation.

The CEC ties the beginning of "eligibility" for the Avista procurement to the adoption of RPS Eligibility Guidebook changes in March of 2007 that were in part intended to implement Senate Bill 107. SMUD notes that SB 107 was chaptered in the fall of 2006 and became effective on January 1, 2007.

The CEC's implementation of the RPS was governed not just by the series of RPS Eligibility Guidebooks over time, but also by overarching provisions in "Overall Guidebooks". These Guidebooks contained broad provisions applying to other parts of the Renewable Energy Program at the CEC, in addition to the RPS. The CEC adopted a revised Overall Guidebook, as well as a revised RPS Eligibility Guidebook in March of 2007. The adopted March 2007 Overall Guidebook adopted states:

> "These Guidelines shall take effect once adopted by the Commission at a publicly noticed business meeting pursuant to Public Resources Code Section 25747, Subdivision (a). **The Guidelines may be given retroactive effect as specified by the Commission and in accordance with its statutory authority."** (Overall Program Guidebook, CEC-300-2007-003-CMF, Page 4. Emphasis added)

The March Overall Guidebook then established a retroactive implementation date for the provisions of SB 107, stating:

> "These Guidelines govern any funding available under the Renewable Energy Program or any of the program elements ***starting January 1, 2007*** …" (Page 3, emphasis added).

It is clear that the Overall Guidebook applied to the RPS at that time. The March Overall Guidebook states:

> "These *Guidelines* also address aspects of the Renewable Energy Program related to the state's Renewables Portfolio Standard (RPS) under Senate Bill 1078 and Senate Bill 107." (Page 1)

And continues:

> The *Guidelines* are divided into seven parts and available in seven documents:
>
> • *Overall Program Guidebook.*
> • *Existing Renewable Facilities Program Guidebook.*
> • *Emerging Renewable Program Guidebook.*
> • *New Solar Homes Partnership.*
> • *Consumer Education Program Guidebook.*
> • New Renewable Facilities Program Guidebook.
> • *Renewables Portfolio Standard Eligibility Guidebook.*

The Overall Guidebook also includes the glossary of definitions that are necessary for the RPS, and many other contextual references to the RPS Eligibility Guidebook.

January 1st, 2007, was in fact the effective date of the new provisions included in the March 2007 Guidebooks under the CEC's rules. This retroactive effect of the March 2007 Guidelines is binding policy adopted by the full Commission. It clearly states that rules in the March 2007 applied to retail sellers as of January 1, 2007. Thus, these rules explicitly permitting scheduling from a control area must be applied to SMUD's HCO claims for January and February 2007.

4 - There Is No Violation of "Equivalency" in SMUD's Position: As stated above, SMUD generally supports the principle of equivalency with retail seller procurement. SMUD has examined the CEC's previous retail seller verification reports for 2006 and 2007 and has found no previous instances of an "out of state" delivery issue related to the new provisions of SB 107. That is, there appears to be no procurement by retail sellers that the CEC examined and found deficient prior to March of 2007 because it was "firmed and shaped" or violated the Guidebooks prior to March 2007 in any way related to the enactment of SB 107. Hence, there is no "equivalency" precedent that the CEC would be ignoring, should the decision be made today, to treat the contractual arrangements allowed by SB 107 to begin on January 1, 2007. We understand the concern the CEC has about treating the current POU HCO verification differently from verification for retail sellers. But there is no conflict here – the CEC will not be creating differential treatment by accepting SMUD's Avista procurement from December 2006 through February of 2007.

Thank you again for the opportunity to submit comments on SMUD's HCO procurement verification.

/s/

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cc: Corporate Files (LEG 2015-0721)