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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies.	)	Rulemaking 06-04-009 (Filed April 13, 2006)

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of AB 32 Implementation: Greenhouse Gases.	)	Docket 07-OIIP-01

COMMENTS OF THE SACRAMENTO MUNICIPAL UTILITY DISTRICT ON THE *JOINT CALIFORNIA PUBLIC UTILITIES COMMISSION AND CALIFORNIA ENERGY COMMISSION STAFF PROPOSAL FOR AN ELECTRICITY RETAIL PROVIDER GHG REPORTING PROTOCOL*

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July 2, 2007

COMMENTS OF THE SACRAMENTO MUNICIPAL UTILITY DISTRICT ON THE *JOINT CALIFORNIA PUBLIC UTILITIES COMMISSION AND CALIFORNIA ENERGY COMMISSION STAFF PROPOSAL FOR AN ELECTRICITY RETAIL PROVIDER GHG REPORTING PROTOCOL*

The Sacramento Municipal Utility District ("SMUD") submits the following comments on the *Joint California Public Utilities Commission and California Energy Commission Staff Proposal for an Electricity Retail Provider GHG Reporting Protocol* ("Reporting Protocol") dated June 12, 2007, pursuant to the Assigned Commissioner's Ruling Regarding Comments on the Staff Reporting Proposal ("Ruling"). These comments will be filed at both the California Public Utilities Commission (CPUC) in docket R.06-04-009 and the California Energy Commission (CEC) in docket No. 07-OIIP-01.

As a municipal utility SMUD is not subject to the jurisdiction of the CPUC. Nonetheless, SMUD is participating in all of the regulatory proceedings surrounding the development of regulations to implement the provisions of Assembly Bill (AB) 32. SMUD appreciates the cooperative effort between the CEC, CPUC and the California Air Resources Board (CARB) to jointly develop regulations to achieve the goals of AB 32 without unnecessary regulatory burden. SMUD also thanks the staff of each agency for their accessibility and willingness to discuss many of these issues both within and outside of the numerous workshops held by each agency.

SMUD supports the goals of AB 32. In order to achieve these goals the reporting protocols need to focus on obtaining accurate information while not interfering with the reliable operation of the electric grid and electric service to California customers. To that end SMUD provides comments on the Reporting Protocol covering the following areas:

- Facility or unit contracts for existing low carbon resources located outside of California should be credited with the low carbon value of the resource. Differential treatment of low carbon resources depending upon their location inside or outside of the state may violate the dormant Commerce Clause and should be avoided.

- Contracts for firm intermittent resources should report the carbon content of the intermittent resource for all power received under the contract.

- Contracts for unit and facility specific power that allow the use of substitute

energy when the unit or facility is down should report the carbon content for the specified unit or facility for all power delivered.

I. *Facility specific contracts should use the carbon content of the underlying resource (Section 4.1.4).*

SMUD supports the proposed split of power sources into two categories of specified and unspecified resources, recognizing that unspecified resources may be either supplier specific such as system contracts or regional in nature. SMUD also believes it is important for an electric retail provider to be able to make purchasing decisions based on the carbon content of the power. Regulatory certainty regarding carbon content allows developers of low carbon projects to be confident they will be able to sell their power to California in the future.

A. *Contracts for low carbon resources located outside of California should be given the carbon content of the underlying resource.*

SMUD considers the "certain conditions" to be imposed on facility-specific contracts to qualify as a specific resource of: 1) limiting specific resources from purchases to existing long-term contracts, 2) allowing specific resources to only facilities within California, and 3) including only power purchase agreements with new facilities located outside of California, to be unreasonably restrictive[1]. While SMUD agrees minimizing leakage is important, relegating specific power purchases from existing generation sources with low-or zero-GHG emissions outside of California to a location emissions factor essentially requires all new contracts for generation outside of California to be for new generation. These "certain conditions" may unnecessarily place a significant financial burden on California electric retail providers by limiting the low carbon options available for purchase.

SMUD would like to reiterate its support for the goal of minimizing double counting of resources. SMUD supports protocols that ensure power from a facility specific contract is not counted by both the purchaser and the overall system or area in developing a system or area emission factor. Nonetheless, the point of AB 32 is to reduce the carbon footprint of electricity consumed in California. AB 32 by its very nature as a state law cannot dictate the

[1] These comments include SMUD's response to oral clarification made by Mr. Scott Murtishaw during the reporting workshop held on June 21, 2007. Mr. Murtishaw implied that contracts for existing out of state low carbon resources would not receive the carbon content of the underlying resource because it would not change the overall dispatch of both low and high carbon facilities.

carbon reduction strategies of other states. AB 32 can only change dispatch as it relates to California. If an electric retail provider contacts for a specific facility, that electric retail provider should be able to count the power received under that contract at the carbon level of the facility.

SMUD believes that counting new resources and shunning existing resources sends the wrong signal to the market. All low carbon resources should be able to obtain contracts to sell their power. The proposed policy of treating existing low carbon resources as less favorable will push California utilities to contract with other sources, potentially leaving an existing low carbon resource without the ability to obtain long-term contracts for power. This policy could leave existing low carbon resources without the financial support they need to continue operating or operating at a much smaller margin jeopardizing the financial health of the facility. Furthermore, building new low carbon generation cannot be accomplished overnight. California utilities should have all low carbon options available to provide electric service at reasonable rates to their customers.

This section also seems to also imply that only long-term contracts would carry the low carbon value of the resource. The limitation to only long-term contracts also runs counter to the intent of AB 32. If an electric retail provider can obtain low carbon power through a contract that is not double counted, those contracts should be encouraged whether they are short-term, spot, long-term or for any other duration. If an existing low carbon resource has excess power to sell and an electric retail provider can obtain it for any length of time, the California electric retail provider should have an incentive to get the low carbon power. If the electric retail provider receives no credit for that effort to purchase low carbon power, the electric retail provider may just as well purchase system or market power than make the extra effort to see if low carbon power is available. SMUD believes the regulations should provide an incentive for purchases of low carbon power regardless of the term of the contract.

B. *The regulations should follow the conclusions reached in the SB 1368 proceedings and count firm intermittent resources at the carbon content of the intermittent resource.*

Both the CEC and CPUC addressed intermittent resources when developing regulations and rules to implement Senate Bill (SB) 1368. Due to the inherent difficulties in

scheduling intermittent resources i.e. wind and solar), both the CEC and the CPUC allowed firming these resources up to the total energy produced by the intermittent resource and all of the energy delivered under the contract retained the carbon content of the intermittent resource. The total energy provided to the purchaser could not exceed the total energy produced by the intermittent resource. Specifically, the CPUC included the following language in its decision:

> For specified contracts with intermittent renewable resources (defined as solar, wind and run-of-river hydroelectricity, the amount of substitute energy purchases from unspecified resources is limited such that total purchases under the contract (whether from intermittent renewable resource or from substitute unspecified sources) do not exceed the total expected output of the specified renewable powerplant over the term of the contract.

(D. 07-01-039, Attachment 7, page 7.) The CEC regulations included the following language:

> For specified contracts with intermittent renewable resource, the amount of substitute energy purchases from unspecified resources is limited such that the total purchases under the contract, whether from the intermittent renewable resource or from substitute unspecified resources, do not exceed the total reasonably expected output of the identified renewable powerplant over the term of the contract.

(Proposed Section 2906 [b][3].) Consistent with the determinations in implementing SB 1368, SMUD requests that the carbon attributed to intermittent contracts meeting the requirements specified by both the CEC and the CPUC in implementing SB 1368 be used for reporting the carbon content under AB 32.

C. *SMUD proposes the regulations allow firming facility specific contracts when the specified facility is down at the carbon content of the facility specific contract.*

SMUD recognizes the importance of electric retail providers contracting for clean resources. Nonetheless, it is also imperative that these contracts be structured in a way that ensures that system reliability is not compromised. Electric retail providers may contract to receive power from a specific power plant in order to ensure long-term availability of power at a set rate and a set carbon level. Even so, planned and unplanned outages may mean that power from that plant is not available during a small percentage of hours of the year. In order

to ensure reliability, many of these contracts are structured so that the party responsible for providing the power will fill in, or 'firm' a specific plant with unspecified resources for those few hours that the plant is not available to provide the power. Without firming, an upset or maintenance condition at these facilities means no delivery of power to the purchasing entity. The solution used by the industry to avoid potential disruptions in supply is to allow the selling entity to firm unit or facility specific contracts when they are down either as a planned maintenance outage or as an unscheduled outage. Firming allows the purchasing entity to rely upon the contract for power even when the specified unit or facility cannot produce power. In order to ensure the reliability of the power sale, the firming resource is usually system or market power. These types of contracts allow the electric retail provider to identify the unit or facility used to supply the energy and also receive a reliable energy product. It is critical that the CEC and CPUC recognize the value of this type of an arrangement from a reliability standpoint, and allow for some amount of additional system or market energy as was done in SB 1368, while still allowing the contract to be claimed as a specified resource for carbon reporting.

Both the CEC and the CPUC recognized this inherent reliability benefit of firming unit or facility specific contracts. The regulations developed by the CEC and the decision of the CPUC in the SB 1368 proceeding recognized a need to allow firming unit or facility specific contracts. SMUD requests the reporting protocol developed under AB 32 attribute the carbon content of the unit or facility to all deliveries under the contract whether from the specified facility or provided as firming energy.

II. *Comments in response to the questions on page 2 of the Administrative Law Judges' Ruling.*

In general, SMUD would like to see reporting to as accurate as possible. The following comments respond to the additional questions posed on page 2 of the Ruling.

A. *Accuracy, simplicity, appropriately focused policy signals and expandability are important criteria for reporting protocols.*

SMUD agrees that accuracy of reported greenhouse gas emissions (GHG) emissions within limits of practicality and numerical significance is a proper aim for the protocols

(Section 2.3.1). Assumptions and estimates used to attain the practical accuracy may be useful and appropriate, but should be used sparingly for development of policy or where expert analysis suggests the actual emissions are or can be in significant disagreement with assumed or mandated values.

Simplicity of reporting protocols is a key element of reducing compliance accounting costs, and can also increase understanding and acceptance of reporting among new reporters (Section 2.3.3). The balance of simplicity vs. complexity should not always assume that the complex is more accurate. A better criteria set should be to achieve the simplest protocol methods that produce robust, fair, and consistent answers of reasonable accuracy.

SMUD agrees that the policy implications of methods and assumptions should be evaluated. Nonetheless, the numerical outcome of the emission values reported should not distort overall emissions reports by creating virtual values that vary demonstrably and significantly from reality (Section 2.3.6). For economy wide reports, it would be both at odds with the accuracy imperative and arguably be a producer of significant unintended consequence if assumptions that skew reported emissions are used to set policy.

In determining robust defensible values for the carbon content of imported electrical power, care must be taken to include the effects of carbon ownership rights in producing regions. For example, Oregon disagrees with the numbers used by California entities to report the carbon content of imported power. California should strive for consistency while also being fair to California purchasers. The Commission should strive to obtain information on carbon content "ownership" associated with imported and exported power from jurisdictions outside California that export power to California, and reciprocal agreements between and among those jurisdictions should be reached and incorporated into the California protocols as soon as possible.

B. *Accuracy is necessary for the adoption of a protocol that can be used by other states.*

Transportability of reporting protocols developed by Californian is a desirable objective. Chief among the characteristics needed to facilitate transportability is accuracy of mass emission values for each of the six gases. A tonne of carbon dioxide (CO_2) emission

must reliably represent a tonne of CO_2 actually emitted to the atmosphere and a tonne of nitrous oxide (N_2O) must truly describe a tonne of N_2O emitted to the atmosphere. Absolute accuracy has practical limits, but protocols that may significantly distort reported emission values for policy reasons should be avoided, as should aggregation of emission species using global warming potential in such a way as to preclude public record of the actual mass emissions for each of the six GHG's.

The carbon emission "seams" issue is also critical. The proposed protocols contain evaluated assumptions about the carbon content of imported (and presumably exported) power. To be useful to other states, California developed protocols must be compatible with other states' carbon imports and exports.

C. *The CEC and CPUC should evaluate the Power Content Label and the treatment of null renewable power in response to SB 1368.*

The two policy areas needing special inspection are the CEC's process for reporting of energy resources for the Power Content Label (SB 1305), and the CEC and CPUC processes developed in response to SB 1368. Because SB 1368 has a focused policy objective compared to AB 32's broad mandates, it is entirely reasonable to use assumptions in the SB 1368 process that effectively carry out legislative intent while not conforming, one to one, with the AB 32 reporting protocols. However, one area that was identified during the SB 1368 proceedings as needing further, and possibly different treatment in AB 32, was the area of 'null' renewable power. Null renewable power refers to power that has had the Renewable Energy Credit (REC) stripped from it and sold. According to the CPUC's own definition of a REC, all emissions attributes are intended to be included in the REC, not split out to be included with the remaining power. It is critical that the CEC and CPUC recognize that the same 'zero emission' attribute cannot and should not be counted twice by a policy that assigns a zero emission value to both the null renewable power and the REC.

In the development of the SB 1368 regulations, the purpose of assigning the zero-emissions attribute to the null renewable power was to prevent entities from purchasing power from coal plants and 'greening' it with REC's. In the implementation of AB 32 however, it is important that the CEC and CPUC are very clear and consistent with their own definition of a

REC, around which a substantial voluntary market has been built. Treatment of null renewable power should be done such that the power receives the emissions attribution of the region from which the renewable energy was generated.

The Energy Commission's SB 1305 mandated Power Content Label reporting process and the highly visible Power Content Labels distributed in consumer's electricity bills will likely present apparent conflicts with load-based carbon emissions data as reported by utilities. In R.04-06-009 the proposed reporting protocols are based on valuing accuracy and consistency, characteristics that we believe can be largely achieved. The apparent discrepancies with the Power Content Label process will need to be conformed.

D. *Different treatment of existing in-state and out-of-state low carbon resources may run afoul of the Commerce Clause.*

SMUD has a concern about treating contracts for purchases of low carbon energy from existing resources differently depending upon whether that resource is located in California or outside of California in the guise of protecting against contract shuffling. SMUD is concerned the proposed different treatment of existing low carbon resources may violate the dormant Commerce Clause.[2].

In this case, the CPUC, CEC and/or CARB would find it difficult to show the local benefits addressing local concerns from treating existing out-of-state low carbon resources differently than existing in state low carbon resources. Unlike the proceedings setting the emission performance standard under SB 1368 where protecting California customers from future regulations resulting in reliability or higher costs was a local benefit, this contemplated regulation would not impact the carbon content of the generation purchased for California, but would instead attempt to impact the generation of high carbon energy sold elsewhere. SMUD understands and supports the goals of AB 32 to reduce GHG produced to provide electricity to California customers, but this particular proposal unnecessarily allows a potential challenge to the regulations.

Because California is such a large part of the western power market, the shift in

[2] U.S. Const. Art. I, §8, cls. 1, 3.

purchasing decisions by electric retail providers to low carbon resources will by itself create the incentives for development of low carbon resources and reduce the demand for high carbon resources. As California electric retail providers pick up low carbon resources both within and without of California, the demand for those resources will increase and result in either or both a price premium for low carbon resources and an incentive to develop new low carbon resources. High carbon resources will also see a reduction in demand for those resources. Therefore, there is no need to create an extra layer of regulation for existing out-of-state low carbon resources.

III. *Conclusion*

SMUD respectfully requests that the CPUC and CEC take these comments into consideration when drafting reports to CARB and regulations for Electric Retail Providers.

Dated: July 2, 2007

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the attached:

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on all known parties to R. 06-04-009 and CEC Docket No. 06-OIR-1 by transmitting an e-mail message with the document attached to each party named in the official service list. I served a copy of the document on those without e-mail addresses by mailing the document by first-class mail addressed as follows:

See attached service list

Executed this 2nd day of July 2007, at Sacramento, California.

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