SMUD™

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1001 I Street
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**Re: Sacramento Municipal Utility District's Comments on Proposed Modifications to California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation**

SMUD appreciates the opportunity to comment on the proposed modifications to the California Cap and Trade regulations. SMUD understands that the main purpose for the proposed modifications is to establish a linked market with the Province of Quebec, although some of the proposed changes are not related to linkage but affect the Electricity Sector. Nevertheless, SMUD generally supports these changes, and suggests that additional changes be considered in the formally proposed language for the upcoming rulemaking.

SMUD strongly supports the proposed change to entity account structures that will allow a consolidated set of accounts for each corporate entity. SMUD believes that this change provides needed flexibility and solves two problems that had been identified in the adopted regulations: 1) that POUs could have surplus allowances "trapped" in a facility-specific compliance account, unable to use them for needed compliance by a corporately-associated facility; and 2) that the administrative allowances provided to POUs were not clearly able to be placed in the Compliance account that would cover POU electricity import obligations. For SMUD, both of these problems disappear with the new approach.

SMUD suggests three additional modifications that will improve the Cap and Trade regulations as they apply to the Electricity Sector, as noted and discussed below:

- Clarifying the treatment of certain biomass-derived fuel transactions;
- Providing additional allowances to reflect steam sales from cogeneration facilities; and
- Clarifying the treatment of voluntary renewable purchases.

**A) Clarifying Treatment of Certain Biomass-Derived Fuel Transactions.**

Section 95852.2(a) describes emissions for which there is no compliance obligation, from combustion of bio-derived fuels, and Section 95852.1.1 describes eligibility requirements for biomethane fuels. SMUD recognizes that procurement of existing out-of-state biomethane requires some care to ensure real reductions in GHG emissions out of state or overall. SMUD is committed to real GHG emission reductions and opposed to contracts that amount to "resource shuffling". This occurs when a Cap and Trade regulated party receives zero-GHG treatment for biomethane that was already being produced and put to useful purpose outside of California, so that the California party's contract for that biomethane merely "shifts" its use into the state.

In general, the Cap and Trade Regulations prevent "resource shuffling" with biogas contracts by requiring that such contracts access new or expanded sources of biomethane, sources that were previously being vented or flared, or sources that were already committed to California, to ensure that existing biomethane resources are not simply shifted to California. There is a limited exception to this general principle that applies only to contracts signed prior to 2012, and requires that the biomethane under these contracts be supplied within a few months of the contract signing. In effect, this exception "grandfathers" some existing biomethane contracts that were under negotiation or in place prior to the adoption of the Cap and Trade Regulations.

SMUD believes that the intent of the regulations here is that ***all*** contracts that access new or expanded sources of biomethane should be treated as having zero-GHG emission, ***even if signed prior to 2012***. As written, the regulations inadvertently act to prevent zero-GHG treatment of such contracts executed prior to the first of the year. ARB staff has indicated that such contracts are not in the "resource shuffling" category and hence should receive zero-GHG treatment. In many instances, these resources require extended development time, so one cannot always have gas flowing under these contracts within the few months envisioned in the regulations.

SMUD suggests that the regulations be changed so that signing a contract for biomethane that will be new or first put to a productive use is allowed zero-GHG treatment regardless of the date on which the contract is signed. There is a simple regulatory change that will make this happen:

> 95852.1.1(a)(2) The fuel being provided ~~under a contract dated on or after January 1, 2012~~ must only be for an amount of fuel that is associated with:
> (A) …

Note that this regulatory change still prevents new contracts signed after 2011 from receiving zero-GHG treatment if they are merely changing the use of an existing fuel source, and still leaves the limited exemption for such contracts found in 95852.1.1(a)(1).

It simply opens up zero-GHG treatment for those historical contracts that do **not** involve resource shuffling.

### B) Regulations Should Be Changed to Not Dis-Incentivize Cogeneration Facilities That Also Supply Steam to Nearby Industrial Customers

SMUD invested in three cogeneration facilities in the 1990's to provide clean, efficient power for our ratepayers while encouraging low-emission industrial facilities in our service area. Unlike typical cogeneration facilities that supply electricity and steam to an industrial facility and sell any excess electricity to the grid, these cogeneration plants provide electricity only to the grid and supply steam that is sold over-the-fence to industrial facilities nearby. The ARB methodology for allocating allowances to electrical distribution utilities is based solely upon retail load projections and ignores emissions from steam sales. Our contracts for steam sales to these industrial facilities allow no flexibility for pass through of the carbon allowance costs. Hence, SMUD and SMUD's ratepayers have the obligation of compliance for the emissions associated with the steam sales, but the Cap and Trade program does not recognize this obligation. The proposed 15-day language for the Cap and Trade program imposes an allowance obligation on the steam-related emissions from these highly efficient arrangements, and thus acts as a disincentive.

A remedy for this deterrent would be to allocate to the steam provider a requisite portion of allowances from the industrial sector to cover emissions associated with provision of steam to the industrial customers. To acknowledge this situation and accommodate others that may potentially fall in this category, SMUD recommends that under this alternative the following section be added to the regulation:

> § 95891. (c)(5) Wholesale Steam Sales. For covered entities who are under Long-Term Steam Contracts to supply steam to an industrial facility that does not contain a clause to pass through the cost of compliance, allowances will be provided to the steam provider in the amount equivalent to what the industrial facility would have received if its emissions were covered in the industrial sector.

In addition to this added section, SMUD recommends splitting the definition of "Long Term Contract into two terms – reflecting Electricity and Steam Contracts, as follows:

**156)"Long-Term Electricity Contract" means a contract for the delivery of electricity entered into before January 1, 2006 for the term of five years or more.**

**157)"Long-Term Steam Contract" means a contract for the delivery of steam entered into before January 1, 2006 for the term of five years or more.**

### C) Voluntary Renewable Energy Provisions Should Also Recognize Out-of-State Renewable Purchases.

SMUD reiterates previous comments that the Cap and Trade Regulations do not clearly allow zero-GHG treatment in certain circumstances for purchases of renewable energy for green pricing programs. While the ARB has included provisions to handle the GHG treatment for purchasing out-of-state RPS-eligible renewable energy for use in RPS programs using an "RPS adjustment," no similar treatment is available if the same resource is used instead for a voluntary program. In the FSOR for the Cap and Trade regulations, ARB staff suggested that they would rely upon the requirements set by the California Energy Commission to determine whether a technology or particular generator meets their established eligibility requirements for the Renewable Portfolio Standard, and that it was such RPS eligible generation that would be allowed to take the "RPS Adjustment" for voluntary renewable purchases. However, the regulations as drafted would appear to limit the RPS Adjustment to only situations of actual RPS compliance.

The following change would allow resources that would normally count for the state's RPS to also be fully viable for voluntary program customer needs without incurring a compliance obligation or challenging the GHG benefits expected from voluntary renewable procurement.

95852(b)(4)(B) The RECs associated with the electricity claimed for the RPS adjustment must be used to comply with California RPS requirements or to supply a green pricing program during the same year in which the RPS adjustment is claimed.

### Closing

SMUD appreciates the opportunity to comment on the proposed modifications to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance

Mechanisms Regulation, and urges ARB to adopt the recommendations described above.

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cc: Corporate Files