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Power Source Disclosure Program (AB 1110)**

Additional submitted attachment is included below.



October 28, 2019

California Energy Commission
Docket Unit, MS-4
Re: Docket No. 16-OIR-05
1516 Ninth Street
Sacramento, CA 95814-5512

CalCCA Comments on the Modifications of Regulations Governing the Power Source Disclosure Program (AB 1110)

The California Community Choice Association (CalCCA) submits the comments below on the Modifications of Regulations (Modified Regulations) Governing the Power Source Disclosure Program (PSD), issued in September 2019. CalCCA appreciates the opportunity to provide comments on the modified regulations. CalCCA offers support for numerous aspects of the Modified Regulations, along with recommendations for further changes.

CalCCA supports the Modified Regulations' approach to:

- Permit attestation of electricity portfolios offered by the board of directors of public agencies.
- Treatment of emissions associated with Cost Allocation Mechanism (CAM) resources.

CalCCA recommends the additional modifications to the Modified Regulations:

- Emissions associated with Portfolio Content Category (PCC) 2 products should be based on contracted-for renewable energy resources, not substitute power.
- If emissions associated with PCC 2 products remains unchanged, then the emission calculation exclusion date should be extended to December 31, 2019 to allow market participants to adjust their resource procurement strategies.
- PCC 3 products are eligible renewable portfolio standard (RPS) products, and should be reflected in the Power Content Label (PCL) based on the fuel mix used to generate the underlying renewable energy quantities.
- Emissions associated with distribution and transmission losses should be excluded from the PCL to avoid customer confusion.
- The Commission should adopt October 1 as the date by which annual disclosures must be provided to customers, for consistency with current practice.
- The Commission should issue a reporting template for new CCAs to use pursuant to section 1394.1(g).
- The Commission should be mindful of regional accounting inaccuracies and market impacts that will result from the proposed emissions accounting methodology for PCC 2 and PCC 3 products.
- The Commission should modify the definition of "specified purchase" to include certain after-the-fact purchases of generation from in-state and dynamically scheduled large hydroelectric and nuclear resources in 2019 and 2020 pursuant to a California Public Utilities Commission

(CPUC)-approved mechanism for allocating such resources among investor-owned utility portfolios and portfolios of other retail suppliers whose customers pay for those resources through the Power Charge Indifference Adjustment (PCIA), if the CPUC approves a reallocation mechanism for such resources.

I. CalCCA Supports the Self-Attestation Option for Public Agencies

CalCCA supports the changes the Modified Regulations made to Section 1394.2(a)(2). The Modified Regulations properly provide that public agency retail suppliers, such as publicly owned utilities (POUs) and community choice aggregators (CCAs), may have their Boards of Directors submit an attestation for verification of PCL reporting.

CalCCA urges the Commission to retain these provisions in the final regulations. Because public agencies conduct their business activities in public meetings and disclose a broad range of documentation and data related to resource planning, programs, and procurement, customers served by these agencies have opportunities to submit public comments. Furthermore, public agencies are subject to the Public Records Act (PRA) requests, providing additional transparency to their business activities. Therefore, public agencies that provide retail electricity to customers should not be subject to the same audit and verification procedures that are applicable to investor owned utilities (IOUs) in Section 1394.2(a)(1).

II. CalCCA Supports the Provision Related to CAM Resources

CalCCA supports the Commission's treatment of CAM and CAM-like resources, where the IOUs report the portion of procurement that is attributable to the IOUs serving their own load. CalCCA appreciates Commission staff's recognition that attributing the emissions associated with CAM and CAM-like resources to non-IOU LSEs would likely incur significant administrative burden and could result in inaccurate emission attribution that could mislead non-IOU LSE customers. CalCCA supports the retention of this treatment of CAM and CAM-like resources in the final regulations.

III. The Treatment of PCC 2 and PCC 3 Resources Creates Inconsistency between California's Regulations, Undermines Renewable Growth in the Western United States, and Would Cause Regional Emissions Accounting Inaccuracies

CalCCA recommends that the Commission re-examine its proposed treatment of PCC 2 and PCC 3 resources. The proposed regulations would disrupt the renewable energy market, undermine meaningful renewable energy development in the Western states, create regional power source emissions inaccuracies, and significantly increase costs for ratepayers. The proposed regulations essentially punish entities that have aggressive renewable and carbon-free procurement goals mandated by their governing boards.

In characterizing the Modified Regulations as *reporting* requirements rather than *compliance* requirements, the Commission underestimates the accountability impact of the disclosure. For LSEs

with aggressive carbon free procurement goals, the Modified Regulations are the de facto compliance measurement instrument. AB1110's restrictions on marketing require compliance with the Modified Regulations by any retailer supplier that characterizes their portfolio as coming from certain types of resources, or as having certain emissions levels. The Modified Regulations establish a compliance regime, one that will interfere with rather than facilitate achievement of California's GHG-reduction goals.

1. Differences in Contracts and Supporting Documents between PCC 1 and PCC 2/PCC 3 Products Do Not Affect Physical Flow of Energy or Related Emissions

The difference between PCC 1 and PCC 2/PCC 3 resources lies in contractual terms, not in physical flows. Today, there is renewable energy that is dynamically scheduled into California from other parts of the Western Electricity Coordinating Council (WECC), which is verified based on contracts signed between buyers in California and generators that are located outside of California. It is uncertain whether at the instant of electricity generation that the electrons produced by those resources are flowing directly into California. Importantly, though, the "flows" can be verifiable through the creation of renewable energy credits (RECs) when renewable energy has been generated within WECC.

Contractual differences between these products do not cause any changes to physical power flows; specifically, contractual distinctions do not result in renewable or non-renewable electricity being "actually delivered" to any particular location. In other words, the electricity generated by a PCC 1 resource within California, with a contractual obligation to a Northern California entity, is not guaranteed to flow to that LSE's territory, and could potentially be exported to LSEs or balancing authority areas (BAAs) outside of California. Instead, the electricity that flows into the LSE's territory could be generated in-state, out-of-state, by renewable resources or non-renewable resources.

Therefore, attributing emissions to PCC 2 and PCC 3 resources based on substitute power instead of the contracted renewable resources is not based in science, and undermines the development of renewable resources within WECC and results in over-stated emissions in the Western states.

2. The Goal of AB 1110 is not Verifying Greenhouse Gas (GHG) Emission Reduction in California or Anywhere in WECC

Questions regarding the validity and verifiability of PCC 2 resources in reducing emissions have been referenced throughout the rulemaking.¹ First, nowhere in AB 1110 is GHG emission reduction mentioned as a goal. Second, it is unclear whether PCC 1 resources are indeed reducing emissions and displacing fossil fuel within California, on an electron by electron basis. In fact, natural gas resources have been needed to ensure reliability when intermittent renewable resources are not generating within California.

¹ Initial Statement of Reasons at pages 17, 18, 20.

It is not productive to argue the merits of emission reductions of particular renewable resources. AB 1110 requires disclosure of emissions *intensity* “for each purchase of electricity by a retail supplier to serve its retail customers.”² AB 1110 does not require disclosure of emission *reductions*. When an electricity retailer purchases renewable resources, the retailer is making an investment in a zero-emission resource on the grid, whether it is within California or outside of California. As explained above, given that it is impossible to determine whether an electron generated by a renewable energy resource contracted by a specific LSE ultimately ends up in the LSE’s service territory, the only way to verify that renewable energy has indeed been generated is through RECs.

CalCCA strongly urges the Commission to reconsider the treatment of PCC 2 and PCC 3 resources in adopting the final regulations by creating reporting standards that achieve the clearly stated goal of AB 1110 by deferring to REC-based accounting when attributing emission attributes to renewable energy purchases.

3. *The Inconsistent Treatment of Renewable Resources Imposes Significant Costs on Ratepayers, Particularly Those Who Have Chosen to Be Served by LSEs with Strong Renewable Procurement Targets*

By attributing emissions to PCC 2 resources based on the substitute power, and by excluding PCC 3 resources from accounting reflected under the “Eligible Renewable” subheading, the Commission essentially takes away tools that LSEs can utilize to meet their renewable energy development goals. Further, LSEs with ambitious renewable and carbon free procurement targets will have to purchase PCC 1 products or PCC 2 products that can be firmed and shaped with carbon-free resources.

As the supply of carbon free resources tightens in the WECC, firming and shaping PCC 2 resources with carbon free resources has become more and more expensive. As the staff acknowledges in its Fiscal Economic Impact Assessment, CCAs could incur \$5,202,847 for fiscal year 2020 and 2021.³ CalCCA believes that this estimate is unrealistically low. In its most recent analysis, Marin Clean Energy (MCE) estimates that shifting its procurement strategies to more closely resemble PG&E’s expected portfolio emissions intensity and complying with the GHG-free procurement goals set by its Board would result in incremental cost increases approximating \$9 million dollars per year. As East Bay Community Energy recently reported during a July meeting of its Executive Committee, the proposed changes to the PCL could increase procurement costs by over \$8 million annually at today’s levels of renewables procurement. While EBCE is actively conducting solicitations for in-state resources and has already signed agreements for over 550 MW of new resources located in California, the majority of these new projects will not come online until December 2021 or later.⁴ In the meantime, in order to comply with direction from its Board of Directors, new CCAs like EBCE will need to consider alternative procurement strategies that are more expensive, such as swapping

² AB 1110 Legislative Counsel’s Digest.

³ Fiscal Economic Impact Analysis, page 12.

⁴ See <https://ebce.org/ebce-expands-its-renewable-energy-and-storage-portfolio-with-two-new-contracts-and-memorandum-of-understanding/>.

short-term transactions for PCC 2 and 3 resources for PCC 1 resources, or signing agreements solely with out-of-state resources that have transmission rights. Notably, these additional costs are not reflected in the Commission's Economic Impact Assessment. Other CCAs of similar sizes are also seeing similar cost increases. Similarly, by eliminating PCC 3 resources as an eligible renewable energy product from the PCL, CCAs will have to procure more expensive PCC 1 or PCC 2 resources to compete with their incumbent IOUs on the basis of electricity portfolio emission intensity.

Based on the analysis, CalCCA recommends the Commission reconsider its treatment of PCC 2 and PCC 3 resources in the final regulations.

IV. Grandfathering of PCC 2 Resources Needs to Be Meaningful

CalCCA appreciates the Commission proposing a later “grandfathering” date for PCC 2 resources than it did in past iterations of staff proposals, acknowledging the need for some allowance during the transition between different regulatory paradigms. While CalCCA believes that PCC 2 resources should be attributed emissions based on the underlying renewable resources that produced the REC, as stated above, CalCCA thanks the Commission for making an effort to help reduce the burden that LSEs and ratepayers may incur during the transition.

However, retail sellers have already procured 2019 resources under the existing RPS and PCL reporting requirements and will be unable to adjust their 2019 procurement to conform to regulations adopted at the end of 2019. Therefore, customers who paid for and were promised electricity portfolios with specific characteristic may be angry, confused and disappointed, which could damage an LSE's relationship with its customers and damage the reputation of the LSE and Commission. The outcome could include reduced customer interest in procuring additional renewable energy in the future.

Furthermore, the precedent of regulatory uncertainty created by changing the rules applicable to a year that has largely passed- even without direct financial or regulatory consequences- is likely to discourage RPS procurement and programs; such retro-active application has material financial, reputational, and procurement impacts on LSEs. This precedent will increase the costs of RPS procurement due to increased regulatory risk, and have a chilling effect on scope and depth of innovative efforts to procure beyond the mandated minimum regulatory RPS procurement requirement.

CalCCA recommends that the Commission adopt December 31, 2019 as the grandfathering date for PCC 2 resources. To ensure that the grandfathering date has real relief impact on ratepayers and retail sellers, time is needed to allow sellers to adapt their planning and procurement to avoid confusing customers with changed metrics applied retroactively. Since the regulations will be heard and potentially adopted on November 13, 2019 at the earliest and implemented thereafter, CalCCA suggests December 31, 2019 as the earliest possible date for the grandfathering provision as the adoption of the regulations will send the real signal for change to the market.

V. Emissions Associated with Distribution and Transmission Loss Should Not Be Disclosed to Avoid Customer Confusion

The disclosure of emission intensity associated with purchased electricity to account for distribution and transmission loss was proposed in the first draft of staff proposal, and eliminated subsequently in the second staff proposal.⁵ CalCCA supported such change in its comments filed in February 2018 comments, and agreed with Commission staff's rationale then that the inclusion of the distribution and transmission loss would have created accounting complexities and inconsistency with other state reporting requirements (such as RPS), as well as confusion for customers.⁶ Therefore, CalCCA is surprised by the re-introduction of distribution and transmission loss in the latest regulations, where transmission and distribution losses must be described in Section 1394(b)(3)(B).

Based on the language, it is unclear whether LSEs will need to disclose emissions associated with distribution and transmission line losses, which CalCCA still opposes for the aforementioned reasons. If that is not the intention, CalCCA asks the Commission for clarification on the need to disclose such losses, and whether such losses should be considered in each retail seller's emission intensity calculation.

VI. Exemptions on Retroactive Transactions Should Be Granted in the Years of 2019 and 2020

The definition of "specified purchase" in the Modified Regulations includes the following new final sentence: "Specified purchases shall be documented through purchase agreements executed prior to generation of the purchased electricity."⁷

CalCCA proposes a further amendment to the Modified Regulations' definition of specified purchase. The amended language below creates an exception to the requirement of a contract prior to generation, with the specific limitations below:

- Only available to retail suppliers whose customers pay PCIA with large hydroelectric and nuclear in their PCIA vintage
- Requires active agreement between retail suppliers to offer and to take generation

⁵ Revised Assembly Bill 1110 Implementation Rulemaking at page 12.

⁶ CalCCA Comments on Assembly Bill 1110 Implementation Draft Proposal for Power Source Disclosure, filed February 23, 2018 at page 2.

⁷ According to the initial statement of reasons at page 9: "Without a purchase agreement in place prior to the purchase of electricity from the market, one purchaser could by happenstance receive e-tags from a resource with low GHG emissions while another purchaser might randomly receive e-tags from a resource with high GHG emissions. Retail suppliers cannot claim specific resources, or attributes of those resources, unless they intentionally purchased those specific resources; therefore electricity purchased from the open market can only be claimed as unspecified power, regardless of whether an e-tag can be used to trace to a specific source."

- Requires that the CPUC approve an after-the-fact mechanism for the transactions of such generation in 2019 and 2020
- Limited to large hydroelectric and nuclear resources
- Limited to in-state and dynamically scheduled resources on the CAISO controlled grid

The specific proposed language, as an addition to the “specified purchase” definition, is in italics below:

Specified purchases shall be documented through purchase agreements executed prior to generation of the purchased electricity, except that purchases of generation from in-state or dynamically scheduled large hydroelectric and nuclear resources in 2019 and 2020 may be documented after the generation of the electricity when a retail supplier whose customers are paying for such resources through the California Public Utilities Commission-approved Power Charge Indifference Adjustment elects to purchase such in-state large hydroelectric or nuclear resources following a CPUC-approval of a mechanism for allocating such resources.

The reason for the proposal is that, at present, many customers no longer taking retail electric service from investor-owned utilities (IOUs) continue to pay for the costs of IOU-owned large hydroelectric and nuclear resources. They do this through a California Public Utilities Commission (CPUC)-approved ratemaking mechanism called the Power Charge Indifference Adjustment (PCIA). These unbundled customers pay for large hydroelectric and nuclear resources whether they want to or not, with no opportunity to claim the PCL reporting associated with them.

IOUs are considering offering generation from in-state or dynamically scheduled large hydroelectric and nuclear resources to LSEs serving customers paying for those resources through the PCIA via an allocation mechanism. Such LSEs can elect to take their strip of large hydroelectric, or nuclear, or both, consistent with definition of specified purchase.

IOUs will need CPUC approvals for an allocation mechanism. Given the lead time for CPUC action on an IOU request for authority to make such an offer, the contracts for volumes that unbundled customers will have paid for in 2019 and the early part of 2020 cannot be executed prior to delivery (only some of 2020 can be contracted for on a forward-looking basis). Thus the proposed change here, which is limited to fixing the targeted problem of LSEs serving unbundled customers who (1) have already paid for the resources through PCIA and (2) want an after-the-fact slice of 2019-20 in-state or dynamically scheduled large hydroelectric and/or nuclear generation counted on their PCL.

Whether the exception is invoked will be contingent on IOU filings at the CPUC requesting authority for an after-the-fact allocation, and CPUC approval of such a mechanism.

The Commission should adopt the limited and targeted exemptions for in-state or dynamically scheduled resources transacted between IOUs and non-IOU LSEs through the approved regulatory mechanism. These transactions are consistent with the Commission’s definition of specified

purchase, except for the timing of the documentation. Granting the exemptions will not impact other transactions.

VII. Annual Disclosures Should be Provided to Customers on or before October 1

CalCCA appreciates the Commission's aim to clarify, in Section 1394.1(b)(2), the date by which the PCL must be provided to customers. As the Commission has acknowledged, prior language specifying a deadline as of "the end of the first complete billing cycle for the third quarter of the year" is difficult to interpret.⁸ However, as other parties noted in comments during the October 7 public workshop,⁹ retail suppliers have historically managed this uncertainty by adopting a common practice: most retail suppliers currently provide their PCL to customers on or before October 1 each year. The current practice of providing the power content label by October 1 is consistent with the statutory language and should be adopted as the deadline, instead of August 30.

An additional benefit of the October 1 deadline is that it provides adequate spacing between customers' receipt of the PCL and the other required mailings they receive throughout the year. For example, in July of each year, all customers currently receive a Joint Rate Comparison, as required by the Public Utilities Commission. Providing the PCL by mail in October rather than August would avoid inundating customers with information all at once.

VIII. Additional Templates are Needed to Accommodate New CCAs

Section 13941.1(g) implements a provision of Public Utilities Code that offers new CCAs formed after January 1, 2016 additional time to disclose GHG emissions intensities. This provision will apply to a number of CCAs. CalCCA requests that the Commission, in addition to the templates it recently provided, also issue templates to be used by the CCAs that will be exempted from disclosing GHG emission intensities in 2019, pursuant to the regulations.¹⁰

IX. Conclusion

CalCCA appreciates the Commission staff's hard work on the Modified Regulations and looks forward to collaborating with staff to ensure the final regulatory language achieves the goal of improving customers' understanding of GHG emissions associated with their electricity purchases.

Sincerely,

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⁸ Public Utilities Code, section 398.4 (c)

⁹ Transcript of 10-07-2019 Lead Commissioner Workshop at p. 64, lines 19-22.

¹⁰ Staff issued a Proposed Power Content Label Template and Proposed Annual Report Template on October 2, 2019.