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On Proposed Modifications to Regulations Governing the Power Source Disclosure Program

Additional submitted attachment is included below.

STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

In the matter of:	)	
	)	
Rulemaking to Consider Modifications	)	Docket No. 14-OIR-01
To the Electricity Generation Source	)	
Disclosure Regulations	)	

COMMENTS OF THE UTILITY REFORM NETWORK AND THE NATURAL RESOURCES DEFENSE COUNCIL ON PROPOSED MODIFICATIONS TO REGULATIONS GOVERNING THE POWER SOURCE DISCLOSURE PROGRAM

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COMMENTS OF THE UTILITY REFORM NETWORK AND THE NATURAL RESOURCES DEFENSE COUNCIL ON PROPOSED MODIFICATIONS TO REGULATIONS GOVERNING THE POWER SOURCE DISCLOSURE PROGRAM

In response to the December 18, 2015 Notice of Proposed Action, The Utility Reform Network (TURN) and the Natural Resources Defense Council (NRDC) jointly submit these comments on the proposed modifications to regulations governing the Power Source Disclosure Program (PSDP). TURN and NRDC have identified several serious problems that must be remedied before the revised regulations can be adopted by the Commission.

I. RETAIL SUPPLIERS SHOULD NOT BE PERMITTED TO CLAIM AN OUT-OF-STATE PURCHASE AS RENEWABLE BASED SOLELY ON ELIGIBILITY UNDER OTHER STATE RENEWABLE PORTFOLIO STANDARDS

The Commission proposes to create a new category of electric supply classified as "Non-California eligible renewable" for reporting by retail suppliers. This category would include "electrical generation from an out-of-state facility that is not certified by the California Renewables Portfolio Standard Program (RPS), but that is certified by another state's Renewables Portfolio Standard."[1] The Commission asserts that this category is appropriate because the definition of "eligible renewable" in AB 162 is limited to those resources certified under the California Renewables Portfolio Standard (RPS) program and does not allow retail suppliers to include facilities that are not California RPS eligible, even though they may be eligible for an RPS program in a different state. In particular, the Commission notes that some multi-jurisdictional retailers are "subject to different RPS requirements in different states, and their products may have sources that are eligible in one state and not another."[2]

[1] Proposed §1391(n).
[2] Initial Statement of Reasons, page 6.

The rationale provided by the Commission is not persuasive and the draft regulations do not specify that the new category of "non-California eligible renewable" is limited to multi-jurisdictional retailers. More generally, the Commission fails to reconcile the creation of a resource category tied to legislative guidance in other states with the clear and direct guidance from the California legislature on this issue. The adoption of this new resource category is therefore unjustified and could result in significant confusion among customers and conflict with other state policies. The Commission should eliminate this proposed addition to the regulations.

Although multi-jurisdictional retail suppliers may procure non-RPS eligible products for compliance with clean energy requirements established by other states, there is no basis to conclude that any such procurement should be classified as "renewable" for purposes of the PSDP. Other Western states allow a wide variety of non-renewable resources to be used for compliance with their RPS programs. A straightforward survey of the RPS eligibility requirements in other Western states, which is absent from the record of this proceeding, would reveal the deeply troubling consequences of the proposed change. Although TURN and NRDC have not performed a complete survey of all Western states, the eligibility rules in Nevada, Utah and Arizona highlight critical problems with the Commission's proposed reliance on certification by other states. For example:

- Nevada provides RPS compliance credit for output from pumped hydro storage facilities, for the incineration of municipal solid waste (MSW), and for energy efficiency measures.[3]

- Utah allows RPS credit for demand side management measures, MSW incineration, compressed air storage, waste gas and waste heat capture

[3] Nevada Revised Statutes §704.7811, §704.007, §704.7804.

from fossil fuel generation, methane gas from abandoned coal mines, and methane gas from a coal degassing operation associated with a state approved mine permit.[4] Utah also provides RPS compliance credit for production from any fossil fuel generator that permanently sequesters its carbon dioxide emissions.[5]

• Arizona provides RPS credit for any production from existing large hydropower plants attributable to increases in generating capacity or output claimed to "firm or regulate the output of other eligible intermittent renewable resources."[6]

None of the resources identified in the prior paragraph are considered eligible renewable energy resources under the California RPS.[7] Yet the Commission proposes to allow procurement of any such resource to be classified as "non-California eligible renewable" for purposes of disclosure to retail customers. There is no legitimate rationale for this treatment given the disparities between the rules governing eligibility in various Western states, particularly in light of the clear and specific guidance on this issue from the California legislature that is specifically referenced in AB162.[8]

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[4] Utah Code §10-19-102.
[5] Utah Code §10-19-102.
[6] Arizona Administrative Code Article 18, Section R14-2-1802
[7] The California RPS provides limited eligibility for legacy MSW facilities located in Stanislaus county where a contract is executed prior to January 1, 2017 (Cal. Pub. Util. Code §399.12(e)(2)).
[8] Another potential disconnect could occur due to different REC retirement rules in different Western states. For example, the recent proposal for increases to the Oregon RPS includes a provision that would allow RECs to be used for compliance up to five years after the date of generation. This five-year "shelf-life" is different from the three-year life of RECs under the CA RPS program. Under the proposed regulations, retail suppliers could be permitted to procure five-year old RECs from Oregon and report them as eligible renewable energy despite the fact that these RECs are categorically ineligible for compliance with the California RPS.

Moreover, the proposed regulations do not limit reporting of "non-California eligible renewable" to multi-jurisdictional retail suppliers. As a result, the regulations appear to require (or allow) any retail supplier to report procurement from eligible out-of-state resources under this category. This loophole would allow and even encourage California retail suppliers to procure resources such as coal-based methane from Utah and report such purchases as "renewable" to customers.

The Commission must faithfully discharge its obligation to ensure that customers are provided with "accurate, reliable and simple to understand information on the sources of energy that are used to provide electric services."[9] It is inconsistent with this obligation to allow the procurement of fossil-fueled resources (such as methane gas harvested from Utah coal mines) to be characterized as a "non-California eligible renewable" resource. Doing so would contravene the clear guidance from the California legislature on which resources should be considered renewable and is likely to create confusion in the minds of consumers. The Commission should therefore delete this proposed modification and require that all retail suppliers classify procurement from out-of-state resources either as a specified source based on the definitions provided in statute or as "unspecified" procurement that is not attributable to any particular fuel type.

II. THE DEFINITION OF WREGIS CERTIFICATE SHOULD NOT INCLUDE CERTIFICATES PRODUCED OUTSIDE OF THE WESTERN ELECTRIC COORDINATING COUNCIL

The Commission proposes to add a definition of "WREGIS Certificate" that would permit retail suppliers to make retail product claims based on "a certificate imported from a compatible registry and tracking system and

[9] Cal. Pub. Util. Code §398.1(b).

converted to a WREGIS certificate."[10] The reference to "a compatible registry" is not explained in either the proposed regulations or the Initial Statement of Reasons. It is not clear whether allowing certificates to be "imported from a compatible registry" could permit retail suppliers to claim "renewable" procurement from resources that are located outside the WECC. Moreover, the language suggests that WREGIS certificates could be awarded for resources that are not considered "renewable" under the definitions adopted by any WECC state.[11]

The Commission must, at a minimum, define what is meant by "a compatible registry," reinforce the requirement that any certificate must be created by an eligible renewable generator, and clarify that no facility located outside the WECC is eligible to generate a "WREGIS certificate". Otherwise, the new regulation could be understood to allow RECs generated in other regions (*i.e.* ISO-NE, PJM) to be purchased by retail suppliers and claimed as an "eligible renewable" purchase on the Power Content Label. This outcome would be unreasonable, illogical and in violation of state law.

III. THE PORTION OF ELIGIBLE RENEWABLE PROCUREMENT SOURCED FROM UNBUNDLED RENEWABLE ENERGY CREDITS SHOULD BE IDENTIFIED IN A SEPARATE LINE-ITEM

The original May 2015 draft regulations proposed classifying the procurement of unbundled Renewable Energy Credits (RECs) as "REC only" purchases that would be separately reported under "eligible renewables".[12] The revised proposed regulations eliminate this category and would permit retail suppliers

[10] Proposed §1391(y).
[11] The structure of this section could be read to mean that a WREGIS Certificate is either "all renewable and environmental attributes from one megawatt hour (MWh) of electricity generation from a generating unit defined as renewable….or a certificate imported from a compatible registry and tracking system and converted to a WREGIS certificate."
[12] Proposed §1391(c)(7), §1392(b)(3)(C).

to avoid any disclosure as to whether the eligible renewable energy is bundled or unbundled ("REC Only"). This change is inappropriate and should be reversed.

Under the current RPS program rules, unbundled RECs may be applied to compliance requirements subject to strict quantity limitations. Starting in 2017, retail suppliers may obtain no more than 10% of total RPS compliance from unbundled RECs.[13] Many retail suppliers buy little or no unbundled RECs while some choose to use the maximum amounts permitted for RPS compliance and acquire substantial additional quantities for the sole purpose of making voluntary renewable energy claims relating to retail products.

The Commission should require retail suppliers to differentiate between bundled and unbundled REC procurement on the Power Content Label. Under the original May 2015 draft regulations, REC Only purchases would be shown as renewable but distinguished in order to provide better information to retail customers. This information would assist customers in understanding the extent to which their retail supplier purchases the physical electricity from a renewable resource or relies upon unbundled certificates matched with unrelated system power purchases.

This approach to disclosure is consistent with the National Association of Attorneys General (NAAG) marketing guidelines that recommend any retail claim based on the purchase of unbundled certificates should "be accompanied by a clear and prominent disclosure of the use of a tagging system to substantiate the claim."[14] NAAG further states that "marketers are cautioned to avoid making claims based on a tagging system that state or imply that the supplier has actually purchased the power itself—as opposed to its environmental

[13] Cal. Pub. Util. Code §399.16(c).
[14] Environmental Marketing Guidelines for Electricity, National Association of Attorneys General, December 1999, page 7.

attributes—from the preferred generators."[15]

The extent to which a retail supplier relies on unbundled RECs is increasingly important for consumers interested in the Greenhouse Gas (GHG) impacts of their electricity purchases. Because unbundled RECs are traded separately from GHG allowances both in California and other Western markets, the purchase of unbundled RECs does not guarantee that the zero GHG attributes of the associated physical electricity are transferred to the retail supplier. A retail supplier in California typically matches the purchase of unbundled RECs with system power from nonrenewable generation that must purchase GHG allowances pursuant to the Cap-and-Trade program. The California Air Resources Board does not permit the use of unbundled RECs for the purpose of Cap-and-Trade compliance and notes that "for the emissions profile of electricity generated and procured, RECs play no role in GHG accounting."[16]

The Commission must fulfill its obligation to ensure that accurate and meaningful information is provided to retail customers. Requiring the separate disclosure of REC Only procurement is consistent with this obligation and provides consumers with the ability to make informed choices. In light of this obligation, the unexplained retreat from the May 2015 draft regulations is not reasonable. The Commission should adopt the provisions of that draft that address REC Only transactions.

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[15] Environmental Marketing Guidelines for Electricity, National Association of Attorneys General, December 1999, page 7.

[16] Final Statement of Reasons for Rulemaking Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions, California Air Resources Board, Oct. 28, 2011, at pages 108-110, available at http://www.arb.ca.gov/regact/2010/ghg2010/mrrfsor.pdf.

Respectfully submitted,

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