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on Staff Pre-Rulemaking Workshop on Updates to the Power Source Disclosure Regulations

Additional submitted attachment is included below.

STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:

AB 1110 Implementation Rulemaking

Docket No. 16-OIR-05

**COMMENTS OF THE
CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION
ON STAFF PRE-RULEMAKING WORKSHOP
ON UPDATES TO THE POWER SOURCE DISCLOSURE REGULATIONS**

The California Municipal Utilities Association (“CMUA”) appreciates the opportunity to provide comments to the California Energy Commission (“Commission”) on *Assembly Bill 1110 Implementation Proposal for Power Source Disclosure* (“Draft Staff Paper”), issued on June 27, 2017 and the *Staff Pre-Rulemaking Workshop on Updates to the Power Source Disclosure Regulations* (“Workshop”), held on July 14, 2017.

The proposals presented in the Draft Staff Paper raise many significant concerns and, if implemented, would lead to outcomes counter to the Guiding Principles articulated in the Draft Staff Paper. Further, both the discussion during the Workshop and the comments that have been filed in this Docket demonstrate that there are broad and significant differences in interpretation among the stakeholders in this proceeding. Many of these differences are due, at least in part, to disagreements about factual and technical issues. Therefore, CMUA urges the Commission to focus its near-term efforts on fact-gathering and providing a forum to resolve these technical disputes. Providing an opportunity for stakeholders and the Commission to engage on these

topics can help narrow the scope and quantity of issues that must be addressed in this proceeding.

I. COMMENTS ON THE DRAFT STAFF PAPER AND WORKSHOP

A. Interpretation of AB 1110

Both stakeholder comments and the positions proposed in the Draft Staff Paper imply that specific regulatory outcomes are mandated and that the Commission is narrowly constrained in implementing Assembly Bill (“AB”) 1110 (stats. 2015). When interpreting statutory language, it is useful to begin with the rules of statutory construction:

[The] first task in construing a statute is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, a court must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided. The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible. Where uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation. [Citation.] Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent.¹

The rules of statutory construction further dictate that:

[s]tatutes must be given a reasonable and common sense construction in accordance with the apparent purpose and intention of the lawmakers—one that is practical rather than technical, and that will lead to a wise policy rather than to mischief or absurdity.¹ [] ‘(I)n construing a statute the courts may consider the consequences that might flow from a particular interpretation. They will construe the statute with a view to promoting rather than to defeating its general purpose and the policy behind it.’²

¹ *Vikco Ins. Servs., Inc. v. Ohio Indem. Co.*, 70 Cal. App. 4th 55, 61 (1999) (internal citations omitted).

² *City of Costa Mesa v. McKenzie*, 30 Cal. App. 3d 763, 770 (1973) (citing *Anaheim Union Water Co. v. Franchise Tax Bd.*, 26 Cal.App.3d 95, 105, 102 (1972); *Bush v. Bright*, 264 Cal.App.2d 788, 792 (1968)) (emphasis added).

Additionally, several stakeholders have referenced the intent and purpose expressed by the author of AB 1110, and a letter from the bill’s author is part of the record.³ On this issue, the Courts have clarified that:

In construing a statute we do not consider the motives or understandings of individual legislators who cast their votes in favor of it [citation] Nor do we carve an exception to this principle simply because the legislator whose motives are proffered actually authored the bill in controversy [citation]; no guarantee can issue that those who supported his proposal shared his view of its compass. [citation].

We recognize that the expression of the individual intent of the author of the bill, even though noncontemporaneous, can have some weight because “he is the one who normally presents the bill for consideration at all legislative committee hearings and on the floor of his own house.” [citation]⁴

With this guidance in mind it is instructive to look to AB 1110’s legislative history to help inform the correct interpretation of its requirements.

1. AB 1110 Does Not Mandate the Exclusion of Unbundled Renewable Energy Credits (“RECs”) from the Power Mix.

The Draft Staff Paper proposes that “unbundled RECs should not be included in the power mix or GHG emissions intensity calculations.”⁵ The treatment of unbundled RECs was a central issue in the proposal and development of AB 1110. However, to fully understand the actual requirements of AB 1110, it is useful to examine how the treatment of unbundled RECs evolved through different iterations of the bill. The following table tracks the changes to the part of AB 1110 that deals with unbundled RECs in the context of the power mix:

³ http://docketpublic.energy.ca.gov/PublicDocuments/16-OIR-05/TN215755_20170203T095647_Jordan_Scavo_Comments_Assemblymember_Ting's_Letter_to_the_Daily.pdf

⁴ *Kriz v. Taylor*, 92 Cal. App. 3d 302, 312–13(1979) (internal citations omitted).

⁵ Draft Staff Paper at 14.

Date of Amendment	Amendment to Prior Version of Bill
<p style="text-align: center;">June 19, 2015</p>	<p>(h) Each of the categories specified in subdivision (g) shall be additionally identified as a percentage of annual sales that is derived from the following fuels or sources of energy:</p> <ul style="list-style-type: none"> (1) Coal. (2) Large hydroelectric (greater than 30 megawatts). (3) Natural gas. (4) Nuclear. (5) Eligible renewable energy resources pursuant to the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11)), <i>identified by the corresponding categories described in subdivision (b) of Section 399.16</i>, including any of the following: <ul style="list-style-type: none"> (A) Biomass and biowaste. (B) Geothermal. (C) Eligible hydroelectric. (D) Solar. (E) Wind. (6) Other categories as determined by the Energy Commission.
	
<p style="text-align: center;">August 18, 2015</p>	<p>(h) Each of the categories specified in subdivision (g) shall be additionally identified as a percentage of annual sales that is derived from the following fuels or sources of energy:</p> <ul style="list-style-type: none"> (1) Coal. (2) Large hydroelectric (greater than 30 megawatts). (3) Natural gas. (4) Nuclear. (5) Eligible renewable energy resources pursuant to the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11)), identified by the corresponding categories described in subdivision (b) of Section 399.16, including any of the following: <ul style="list-style-type: none"> (A) Biomass and biowaste. (B) Geothermal. (C) Eligible hydroelectric. (D) Solar. (E) Wind. (6) Other categories as determined by the Energy Commission.
	
<p style="text-align: center;">August 4, 2016</p>	<p>(h) Each of the categories specified in subdivision (g) shall be additionally identified as a percentage of annual sales that is derived from the following fuels or sources of energy:</p> <ul style="list-style-type: none"> (1) Coal. (2) Large hydroelectric (greater than 30 megawatts). (3) Natural gas. (4) Nuclear. (5) Eligible renewable energy resources pursuant to the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11)), including any of the following: <ul style="list-style-type: none"> (A) Biomass and biowaste.

	<p>(B) Geothermal. (C) Eligible hydroelectric. (D) Solar. (E) Wind. <i>(F) Unbundled renewable energy credits.</i> (6) Other categories as determined by the Energy Commission.</p>
	
<p>August 19, 2016</p>	<p>(h) Each of the categories specified in subdivision (g) shall be additionally identified as a percentage of annual sales that is derived from the following fuels or sources of energy:</p> <p>(1) Coal. (2) Large hydroelectric (greater than 30 megawatts). (3) Natural gas. (4) Nuclear. (5) Eligible renewable energy resources pursuant to the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11)), including any of the following: (A) Biomass and biowaste. (B) Geothermal. (C) Eligible hydroelectric. (D) Solar. (E) Wind. (F) Unbundled renewable energy credits. (6) Other categories as determined by the Energy Commission. <i>(7) The portion of annual sales derived from unbundled renewable energy credits shall be included in the disclosures in a format determined by the Energy Commission. A retail supplier may include additional information related to the sources of the unbundled renewable energy credits.</i></p>
	
<p>Chaptered September 26, 2016</p>	<p>(h) Each of the categories specified in subdivision (g) shall be additionally identified as a percentage of annual sales that is derived from the following fuels or sources of energy:</p> <p>(1) Coal. (2) Large hydroelectric (greater than 30 megawatts). (3) Natural gas. (4) Nuclear. (5) Eligible renewable energy resources pursuant to the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11)), including any of the following: (A) Biomass and biowaste. (B) Geothermal. (C) Eligible hydroelectric. (D) Solar. (E) Wind. (6) Other categories as determined by the Energy Commission. (7) The portion of annual sales derived from unbundled renewable energy credits shall be included in the disclosures in a format</p>

	determined by the Energy Commission. A retail supplier may include additional information related to the sources of the unbundled renewable energy credits.
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As copied above, the initial version of AB 1110 (amended June 19, 2015) attempted to address the unbundled REC issues by requiring retail suppliers to identify the Renewables Portfolio Standard (“RPS”) portfolio content category (“PCC”) associated with each type of procurement. Presumably, this would have required each technology type (e.g., solar, wind, geothermal) in the power mix to be broken up into PCC1, PCC2, PCC3, and grandfathered resources. Because a retail supplier may have different PCCs across multiple technology types, such a requirement would have been complicated to implement and confusing for customers. In response to this proposal the Senate Utilities Committee Analysis stated:

Unbundled RECs are RPS eligible. As mentioned, existing statute authorizes a retail seller of electricity to use unbundled RECs to comply with the RPS procurement requirements. **Generally speaking, unbundled RECs are RPS-eligible renewable energy products,** though there are statutory restrictions on the amount of such energy products a retail seller may use in any compliance period.

The proponents of this bill describe their intent as requiring a common methodology for the disclosure of GHG emissions to empower the customer. **It is unclear what relation statutory renewable energy product content categories have to that intent.** *Therefore, the author and committee may wish to consider striking the language that modifies disclosure requirements relevant to eligible renewable energy resources, as follows:*

Eligible renewable energy resources pursuant to the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11)), ~~identified by the corresponding categories described in subdivision (b) of Section 399.16,~~ including any of the following: . . .⁶

This proposed Committee recommendation was accepted, and the language referencing the PCCs was deleted in the August 18, 2015 version of the bill. In the subsequent year, there was a

⁶ Senate Committee on Energy, Utilities, and Communication, Analysis of AB 1110, July 13, 2015 (emphasis added).

second attempt to address the unbundled REC issue. This time, unbundled RECs were simply called out as a separate category that would need to be assigned a separate percentage in the power mix.

This proposal raised similar concerns to the previous attempt to separately call out unbundled RECs, and was also deleted and replaced by the language that ultimately made it into the final bill. Rather than attempting to prescribe the specific format for addressing unbundled RECs in the power mix, the statute simply directs the Commission to develop a format for retail suppliers to report the portion of their resource mix that is made up of unbundled RECs. Nothing in the language of AB 1110 or in the legislative history suggests that the intent of the Legislature is to relegate unbundled RECs to merely being referenced in a footnote, and otherwise be excluded from the power mix. Instead, the legislative history makes it clear that there were two attempts to find a way to provide customers with useful information about the amount of unbundled RECs used by their utility within the power mix. Both of these proposals directly reflected unbundled RECs as being part of the actual power mix. The final amendment (August 19, 2016) was not a direction to abandon or diminish the role of unbundled RECs. Instead, it was a recognition that the Commission has broad expertise on the RPS and the treatment and verification of RECs, and is more capable of defining a way to reflect these RECs in the power mix.

As described above, the rules of statutory construction dictate that the Commission must (1) interpret these provisions in a practical manner; (2) consider the consequences that would flow from an interpretation; (3) harmonize the interpretation with statutory sections dealing with the same subject; and (4) promote the general purpose and policy of the statute. The Draft Staff Paper's proposal does not follow this direction. First, rather than providing more accurate

information to customers (the primary purpose of AB 1110), excluding unbundled RECs will only increase the divergence between the power mix reporting and RPS compliance in any year. This takes an existing problem with customer confusion on the RPS and power mix and exacerbates it.

Second, this proposal is inconsistent with related statutes. Pursuant to Public Utilities Code section 399.12(h), RECs (bundled or unbundled) represent proof of “generation of electricity from an eligible renewable energy resource . . . that one unit of electricity was generated and delivered by an eligible renewable energy resource.”⁷ The position of the Draft Staff Paper that “RECs do not convey an emissions profile from the generator from which the RECs were derived”⁸ seems to contradict applicable law that a REC represents proof that a zero-carbon resource generated the electricity and that same electricity is delivered by the resource to a retail customer. Further, RECs include “all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource”⁹

Additionally, the broadly accepted industry standard accounting protocols, such as The Climate Registry as well as The GHG Protocol (a joint initiative of the World Resources Institute and the World Business Council for Sustainable Development), interpret unbundled RECs as representing all of the environmental attributes – including the emissions profile – of the underlying resource that produced them. Both existing law and commercial practice agree that RECs carry environmental attributes such as the emissions profile of the eligible resource. Diverging from both law and industry standards would set a bad precedent and could have unintended adverse consequences on electricity procurement and the renewable energy market.

⁷ Cal. Pub. Util. Code § 399.12(h).

⁸ Draft Staff Paper at 11.

⁹ *Id.*

Finally, the Draft Staff Paper proposal sets bad policy because it deprives the purchaser of the REC (and ratepayers if the purchaser is a retail supplier) of the full value associated with that purchase. Even though the REC owner has a statutory right to all of the renewable and environmental attributes of that MWh of electricity (which was purchased at a premium), the Draft Staff Paper would not permit that MWh of generation to be reflected in the retail supplier's power mix.

Therefore, CMUA urges Commission staff to reconsider its proposed treatment of unbundled RECs consistent with the legislative intent and rules of statutory interpretation discussed above, and to seek further input from stakeholders on the best way to implement the provisions of AB 1110 to provide the customers with useful information on the amount of unbundled RECs in a retail supplier's power mix.

2. AB 1110 Does Not Mandate the Commission To Exclude Unbundled RECs or Firmed and Shaped Renewable Products From the GHG Emissions Intensity Calculations.

The Draft Staff Paper proposes to exclude unbundled RECs from the GHG emissions intensity calculation, and to only count the GHG emissions profile from the substitute energy in a firmed and shaped transaction. The legislative history regarding the statutory language relevant to these two elements is long and complicated. The relevant bill language was completely redrafted multiple times. These changes were the result of a long negotiation involving numerous interests. The ultimate language that was actually codified differed substantially from the original language and structure. The following table tracks the changes to the portion of AB 1110 that gives the Commission direction on what should be included in the GHG emissions intensity calculation:

Date of Amendment	Amendment to Prior Version of Bill
<p>June 19, 2015</p>	<p><i>(k) The emissions of greenhouse gases associated with a retail supplier's electricity sources shall be reported as the sum of all annual emissions of greenhouse gases divided by annual retail electric sales. Emissions of greenhouse gases shall be calculated using the emissions reported for electricity supplied by entities required to report emissions of greenhouse gases pursuant to Article 2 (commencing with Section 95100) of Subchapter 10 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations. Emissions of greenhouse gases shall include any emissions otherwise attributable to any first deliverer, as defined in paragraph (178) of subdivision (a) of Section 95102 of Title 17 of the California Code of Regulations, supplying electricity directly or indirectly to the retail supplier. For purposes of this calculation, no adjustment shall be made to the calculation of emissions of greenhouse gases assigned to any retail supplier through the application of the following:</i></p> <p><i>(1) Renewable energy credits, as defined in subdivision (h) of Section 399.12.</i></p> <p><i>(2) Offset credits issued pursuant to Article 5 (commencing with Section 95801) of Subchapter 10 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations.</i></p> <p><i>(3) Other attributes acquired from any facility not providing the actual delivered electricity used to serve a retail customer.</i></p>
	
<p>August 18, 2015</p>	<p>(k) (1) The emissions of greenhouse gases <i>emissions intensity</i> associated with a retail supplier's electricity sources shall be reported as the sum of all annual emissions of greenhouse gases divided by annual retail electric sales. Emissions of greenhouse gases shall be calculated using the emissions reported for electricity supplied by entities required to report emissions of greenhouse gases pursuant to Article 2 (commencing with Section 95100) of Subchapter 10 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations. Emissions of greenhouse gases shall include any emissions otherwise attributable to any first deliverer, as defined in paragraph (178) of subdivision (a) of Section 95102 of Title 17 of the California Code of Regulations, supplying electricity directly or indirectly to the retail supplier</p> <p><i>(2) For purposes of this calculation, subdivision, no adjustment shall be made to the calculation of emissions of greenhouse gases assigned to any retail supplier through the application of the following:</i></p> <p>(1)(A) Renewable energy credits, as defined in subdivision (h) of Section 399.12.</p> <p>(2)(B) Offset credits issued pursuant to Article 5 (commencing with Section 95801) of Subchapter 10 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations.</p> <p>(3)(C) Other attributes acquired from any facility not providing the actual delivered electricity used to serve a retail customer.</p>
	
<p>September 3, 2015</p>	<p>(k) (1) The greenhouse gases emissions intensity associated with a retail supplier's electricity sources shall be reported <i>by the retail supplier to the</i></p>

customer as the sum of all annual emissions of greenhouse gases divided by annual retail electric sales. Emissions of greenhouse gases shall be calculated using the emissions reported for electricity supplied by entities required to report emissions of greenhouse gases pursuant to Article 2 (commencing with Section 95100) of Subchapter 10 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations. Emissions of greenhouse gases shall include any emissions otherwise attributable to any first deliverer, as defined in paragraph (178) of subdivision (a) of Section 95102 of Title 17 of the California Code of Regulations, supplying electricity directly or indirectly to the retail supplier.

(2) For purposes of this subdivision, no adjustment shall be made to the calculation of emissions of greenhouse gases assigned to any retail supplier through the application of the following:

- (A) Renewable energy credits, as defined in subdivision (h) of Section 399.12.
- (B) Offset credits issued pursuant to Article 5 (commencing with Section 95801) of Subchapter 10 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations.
- (C) Other *environmental* attributes acquired from any facility not ~~providing the actual delivered electricity used to serve a retail customer.~~ *generating the electricity procured by the retail supplier and delivered to the balancing authority in which the customers of the retail supplier are located.*



August 4, 2016

~~(k)(1)The greenhouse gases emissions intensity associated with a retail supplier’s electricity sources shall be reported by the retail supplier to the customer as the sum of all annual emissions of greenhouse gases divided by annual retail electric sales. Emissions of greenhouse gases shall be calculated using the emissions reported for electricity supplied by entities required to report emissions of greenhouse gases pursuant to Article 2 (commencing with Section 95100) of Subchapter 10 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations. Emissions of greenhouse gases shall include any emissions otherwise attributable to any first deliverer, as defined in paragraph (178) of subdivision (a) of Section 95102 of Title 17 of the California Code of Regulations, supplying electricity directly or indirectly to the retail supplier.~~

~~(2)For purposes of this subdivision, no adjustment shall be made to the calculation of emissions of greenhouse gases assigned to any retail supplier through the application of the following:~~

- ~~(A)Renewable energy credits, as defined in subdivision (h) of Section 399.12.~~
- ~~(B)Offset credits issued pursuant to Article 5 (commencing with Section 95801) of Subchapter 10 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations.~~
- ~~(C)Other environmental attributes acquired from any facility not generating the electricity procured by the retail supplier and delivered to the balancing authority in which the customers of the retail supplier are located.~~

	<p><i>(k) (1) Each retail supplier shall disclose the greenhouse gas emissions intensity of any electricity portfolio offered to its retail customers and the Energy Commission’s calculation of greenhouse gas emissions intensity associated with all statewide retail electricity sales, consistent with the requirements of this subdivision.</i></p> <p><i>(2) The Energy Commission shall do all of the following:</i></p> <p><i>(A) Calculate the greenhouse gas emissions intensity for each purchase of electricity from a specified source using data reported to the State Air Resources Board under the regulations for the Mandatory Greenhouse Gas Reporting program or a successor program. If emissions data is unavailable or restricted due to confidentiality, the Energy Commission may establish default emissions intensity factors for purchases from specified sources.</i></p> <p><i>(B) Establish, in consultation with the State Air Resources Board, default emissions intensity factors for electricity from unspecified sources located in California, electricity from unspecified sources imported into the state from other regions, and electricity from sources without a reporting obligation.</i></p> <p><i>(C) Calculate the greenhouse gas emissions intensity associated with statewide retail electricity sales based on the greenhouse gas emissions for total California system electricity.</i></p> <p><i>(D) Rely on the most recent verified greenhouse gas emissions data while ensuring that greenhouse gas emissions intensity factors for electricity from specified and unspecified sources are available to retail suppliers with sufficient advance notice to permit timely reporting.</i></p> <p><i>(E) Retain the right to verify any procurement claims made by a retail supplier, including the right to review any underlying procurement contracts, the associated electronic tags demonstrating that the claimed electricity was delivered to the retail supplier, and all related financial settlements.</i></p> <p><i>(3) The Energy Commission shall not authorize a retail seller to make any adjustments to the calculation of greenhouse gas emissions intensity beyond those permitted under the market-based compliance mechanism adopted by the State Air Resources Board. A retail seller shall not make adjustments due to the use of offset credits, credits associated with any greenhouse gas reductions unrelated to the production of electricity, or unbundled renewable energy credits.</i></p>
	
<p>August 19, 2016</p>	<p>(k) (1) Each retail supplier shall disclose <i>both</i> the greenhouse gas emissions intensity of any electricity portfolio offered to its retail customers and the Energy Commission’s calculation of greenhouse gas emissions intensity associated with all statewide retail electricity sales, consistent with the requirements of this subdivision.</p> <p>(2) The Energy Commission shall do all of the following:</p> <p>(A) Calculate the greenhouse gas emissions intensity for each purchase of electricity from a specified source using data reported to the State Air Resources Board under the regulations for the Mandatory Greenhouse Gas Reporting program or a successor program. If</p>

	<p>emissions data is unavailable or restricted due to confidentiality, the Energy Commission may establish default emissions intensity factors for purchases from specified sources.</p> <p>(B) Establish, in consultation with the State Air Resources Board, default emissions intensity factors for electricity from unspecified sources located in California, electricity from unspecified sources imported into the state from other regions, and electricity from sources without a reporting obligation.</p> <p><i>(A) Adopt a methodology, in consultation with the State Air Resources Board, for the calculation of greenhouse gas emissions intensity for each purchase of electricity by a retail supplier to serve its retail customers.</i></p> <p>(C)(B) Calculate the greenhouse gas emissions intensity associated with statewide retail electricity sales based on the greenhouse gas emissions for total California system electricity.</p> <p>(D)(C) Rely on the most recent verified greenhouse gas emissions data while ensuring that greenhouse gas emissions intensity factors for electricity from specified and unspecified sources are available to retail suppliers with sufficient advance notice to permit timely reporting.</p> <p>(E) Retain the right to verify any procurement claims made by a retail supplier, including the right to review any underlying procurement contracts, the associated electronic tags demonstrating that the claimed electricity was delivered to the retail supplier, and all related financial settlements.</p> <p>(3) The Energy Commission shall not authorize a retail seller to make any adjustments to the calculation of greenhouse gas emissions intensity beyond those permitted under the market-based compliance mechanism adopted by the State Air Resources Board. A retail seller shall not make adjustments due to the use of offset credits, credits associated with any greenhouse gas reductions unrelated to the production of electricity, or unbundled renewable energy credits.</p>
	
<p>Chaptered September 26, 2016</p>	<p>(k) (1) Each retail supplier shall disclose both the greenhouse gas emissions intensity of any electricity portfolio offered to its retail customers and the Energy Commission's calculation of greenhouse gas emissions intensity associated with all statewide retail electricity sales, consistent with the requirements of this subdivision.</p> <p>(2) The Energy Commission shall do all of the following:</p> <p>(A) Adopt a methodology, in consultation with the State Air Resources Board, for the calculation of greenhouse gas emissions intensity for each purchase of electricity by a retail supplier to serve its retail customers.</p> <p>(B) Calculate the greenhouse gas emissions intensity associated with statewide retail electricity sales based on the greenhouse gas emissions for total California system electricity.</p> <p>(C) Rely on the most recent verified greenhouse gas emissions data while ensuring that greenhouse gas emissions intensity factors for electricity from specified and unspecified sources are available to retail suppliers with sufficient advance notice to permit timely reporting.</p>

As proposed in the original AB 1110 language (amended on August 18, 2015), the statutory language clearly and expressly directed the Commission to ensure that no adjustments would be made to the GHG emissions intensity based on RECs, offsets, or other “attributes from any facility not providing the actual delivered electricity used to serve a retail customer.” This direction aligns with the intent and objectives that have been expressed by the author and the proponents of this bill. It is also noteworthy that these early attempts at developing this provision included express references to a “delivery” requirement.

Due to the nature of the electric power grid, tracking the actual delivery of electricity to retail customers from specified sources is not possible. On September 3, 2015, there were amendments that acknowledged this reality, requiring instead that there not be any adjustments for environmental attributes from facilities that do not deliver energy to the “balancing authority in which the customers of the retail supplier are located.” This was a slight improvement over the prior language, because it is more feasible to track transmission paths to balancing authorities. However, this still did not align with the RPS, which only requires delivery to *any* California Balancing Authority to qualify as PCC1, rather than the balancing authority in which the entity is located.¹⁰ The balancing authority delivery requirement in the September 3 amendment would have introduced complexities not consistent with the basic market structure that operates in California. It would have also excluded significant amounts of in-state renewable generation from counting in retail supplier GHG emissions intensity calculations.

When AB 1110 was revived in August 2016, these provisions were redrafted in their entirety. The August 4, 2016 version of the bill eliminated any delivery requirement, but did keep the direction that the Commission could not permit any adjustment to the GHG emissions

¹⁰ Cal. Pub. Util. Code 399.16(b)(1)(A).

intensity based on “offset credits, credits associated with any greenhouse gas reductions unrelated to the production of electricity, or unbundled renewable energy credits.”

For the various policy reasons regarding the value and meaning of RECs (unbundled or not) described in the previous section, various stakeholder interests (including CMUA) were opposed to AB 1110 largely because of these provisions. The relevant Floor Analysis reflects this opposition:

Opponents to this bill – specifically, CCAs – object that this bill prescribes a methodology that will lead to the reporting of inaccurate information to customers and imprecise accounting, and discourage retail suppliers from aggressively meeting or exceeding the requirements of the RPS. The CCAs report they would welcome a bill that, in contrast to this bill, generally directs the CEC to begin a proceeding to identify a uniform standard for the reporting of GHG emissions intensity by retail suppliers of electricity.¹¹

It is noteworthy then, that the next and final version of AB 1110 (amended on August 19, 2016) deletes all references to a prohibition on the Commission from making adjustments based on unbundled RECs. Instead, new language was added that appears to be consistent with the recommendation of the CCAs, directing the Commission to “[a]dopt a methodology, in consultation with the State Air Resources Board, for the calculation of greenhouse gas emissions intensity for each purchase of electricity by a retail supplier to serve its retail customers.” The final Floor Analysis describes this change as follows:

Senate Floor Amendments of 8/19/16 deletes the more-prescriptive methodology by which the California Energy Commission (CEC) is to require the GHG emissions intensity reporting associated with a load-serving entity’s electricity procurement and **replaces it with more general direction to CEC to make reporting requirements via a regulatory proceeding.**¹²

That final Floor Analysis also shows that the prior opposition from the CCAs and from CMUA was removed.

¹¹ Senate Floor Analysis of AB 1110, August 10, 2016.

¹² Senate Floor Analysis of AB 1110, August 23, 2016.

The Draft Staff Paper seemingly ignores this legislative history and seeks instead to simply implement the original intent of the bill as it existed in June of 2015. As stated above, the rules of statutory construction are clear that an author’s original intent or purpose is not dispositive because it does not reflect that common understanding of all the legislators that supported amendments and ultimately voted for the bill. In this case, significant amendments were made in order to gain broader support. By tracking how this bill changed and the associated statements in the relevant analyses, it is clear that what started as very prescriptive direction to the Commission was gradually broadened into the final language, which provides the Commission with the flexibility to design a GHG emissions intensity reporting system based on sound policy.

For the reasons described above relating to the power mix, any proposal that strips RECs of the associated environmental and renewable attributes is inconsistent with related statutes, broad industry consensus, and would lead to greater customer confusion. This increase in customer confusion is counter the first Guiding Principle described in the Draft Staff Paper, which prioritized providing information to customers that is “accurate, reliable, consistent, and simple to understand.”¹³ As other stakeholders, including the Center for Resource Solutions (“CRS”), have pointed out, it is not physically possible to actually deliver electricity from a specific resource to a specific customer or group of customers. Instead, consumption-based demonstrations must rely on contractual instruments, such as RECs, to demonstrate the delivery and consumption of electricity. As CRS has further articulated, the Mandatory Reporting Requirement (“MRR”) is a production-based accounting system that faces significant limitations

¹³ Draft Staff Paper at 4.

when applied to a consumption-based report like the power mix or GHG emissions intensity reporting.¹⁴

For the reasons stated above, the Commissions should seek further input from stakeholders on the best way to meet the purpose of AB 1110 *as it was actually adopted*, respecting the legislative process that led to the final language in the bill.

II. CONCLUSION

CMUA appreciates the opportunity to provide these comments and looks forward to working with staff in this proceeding.

Dated: August 11, 2017

Respectfully submitted,



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¹⁴ See http://docketpublic.energy.ca.gov/PublicDocuments/16-OIR-05/TN220437_20170728T091728_Todd_Jones_Comments_CRS_comment_on_July_14_Workshop_and_June_27.pdf.