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Additional submitted attachment is included below.

STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

In the matter of:	)	
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AB 1110 Implementation Rulemaking	)	
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COMMENTS OF THE UTILITY REFORM NETWORK AND SIERRA CLUB ON THE AB 1110 IMPLEMENTATION PROPOSAL FOR POWER SOURCE DISCLOSURE (THIRD VERSION)

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COMMENTS OF THE UTILITY REFORM NETWORK AND SIERRA CLUB ON THE AB 1110 IMPLEMENTATION PROPOSAL FOR POWER SOURCE DISCLOSURE (THIRD VERSION)

In response to the October 9, 2018 Notice of Availability, The Utility Reform Network (TURN) and Sierra Club submit these joint comments on the third version of the AB 1110 Implementation Proposal for Power Source Disclosure (Revised Staff Proposal). TURN and Sierra Club believe the latest revision generally strikes the proper balance between competing objectives, would result in more accurate disclosures to customers, and creates greater alignment between the Greenhouse Gas (GHG) accounting methodologies used by the Energy Commission, Public Utilities Commission (CPUC), and California Air Resources Board (CARB). Subject to the adjustments identified in these comments, the latest Staff Proposal should be the basis for the upcoming rulemaking to update the Power Source Disclosure Program (PSDP) pursuant to AB 1110.

I. CHANGES TO THE TREATMENT OF RENEWABLE ENERGY CREDITS ARE NECESSARY TO PREVENT DOUBLE COUNTING

The Revised Staff Proposal includes new requirements relating to Renewable Energy Credits (RECs) to avoid the potential for double counting of renewable energy and emissions attributes. The revision requires all retail suppliers to procure the RECs associated with any specified resource procurement reported under PSDP in order to claim the emissions profile of the renewable resource.[1] TURN and Sierra Club support this revision and clarification that the procurement of any associated RECs is necessary to avoid double counting of emissions attributes.

The Revised Staff Proposal correctly explains that although GHG emissions

[1] Revised Staff Proposal, page 13.

intensity should be determined by the source of the electricity procured by the retail supplier, the conveyance of RECs is necessary to support any renewable energy product claims and to prevent the emissions profile of the renewable generation from being double counted in another jurisdiction.[2] To prevent such double counting, retail suppliers must procure the associated RECs and revise any prior year emissions data if the RECs are subsequently resold rather than retired. This approach satisfies the statutory obligation for the Energy Commission to prevent double counting of the GHG emissions attributable to any electricity purchase reported by a retail supplier for "any specific generating facility or unspecified source located within the Western Electricity Coordinating Council."[3]

The Revised Staff Proposal would limit any need for prior year revisions to situations where REC resale "exceeds one percent of the relevant reporting year's retail sales."[4] TURN and Sierra Club urge the Commission to reject the one percent threshold in favor of a requirement that every retail supplier revise prior year reporting based on any resale of RECs, regardless of the quantity. Allowing retail suppliers to resell RECs equivalent to one percent of retail sales without any adjustment to the Power Content Label will create a safe harbor that effectively encourages this practice. The Revised Staff Proposal would establish incentives to resell a specific quantity of RECs by allowing retail suppliers to realize additional revenues without needing to adjust their portfolio disclosures, would result in explicit double counting of renewable energy, and could distort regional emissions accounting. Relevant legislation directs the Commission to

[2] Revised Staff Proposal, pages 13, 16, 18.
[3] Cal. Pub. Util. Code §398.4(k)(2)(E)("Ensure that there is no double-counting of the greenhouse gas emissions or emissions attributes associated with any unit of electricity production reported by a retail supplier for any specific generating facility or unspecified source located within the Western Electricity Coordinating Council when calculating greenhouse gas emissions intensity.")
[4] Revised Staff Proposal, page 16.

ensure that no double-counting of emissions attributes associated with "any unit of electricity" and includes no *de minimis* exception.[5] It is therefore inappropriate for the Commission to adopt a threshold exception to prior year revisions. The Staff Proposal fails to offer any persuasive rationale for this treatment and it should not be adopted by the full Commission.

II. TREATMENT OF FIRMED AND SHAPED IMPORTS

The Revised Staff Proposal would allow retail suppliers to display "firmed and shaped" imports on the Power Content Label as specified products based on the source of the Renewable Energy Credits (RECs) but would require the GHG emissions to be reported based on the profile of the substitute electricity imported at another time. TURN and Sierra Club strongly agree that the emissions profile of any "firmed and shaped" agreement should be based on the emissions of the substitute electricity rather than the emissions profile of the renewable generator providing the associated RECs.

The Revised Staff Proposal appropriately aligns the emissions profile for "firmed and shaped" imports under PSDP with the treatment under the Mandatory Greenhouse Gas Reporting Regulation and the accounting methodology recently adopted by the Public Utilities Commission in the Integrated Resource Planning process. The Energy Commission should take note of the recent CPUC ruling addressing this issue and offering the following justification for its accounting methodology:[6]

> the CNS method adopted by this ruling does not count PCC [Portfolio Content Categories] 2 resources as GHG-free…PCC 2 energy can be substituted with GHG-emitting generation under the RPS rules…Under

[5] Cal. Pub. Util. Code §398.4(k)(2)(E).
[6] *Administrative Law Judge's Ruling Finalizing Greenhouse Gas Emissions Accounting Methods, Load Forecasts, and Greenhouse Gas Benchmarks for Individual Integrated Resource Plan Filings*, CPUC Rulemaking 16-02-007, May 25, 2018, pages 13-15.

existing RPS rules, LSEs could claim existing out-of-state GHG-free energy production on paper while emissions on the western grid do not change.

Without some type of regional carbon pricing and compliance regime, not counting PCC 2 RECs as GHG-free appears to be the most equitable and accurate way to address the uncertainty around projecting the GHG emissions that will likely be experienced by the atmosphere as a result of serving California electricity load, while providing the correct directional incentive for the investment in new GHG-free resources necessary to achieve the state's 2030 GHG targets.

It is also noteworthy, in response to numerous party comments about consistency among California agencies including the Commission, CEC, and CARB, that the CEC's proposal for Power Content labeling under AB 1110 does not count PCC 2 RECs as GHG-free either. Instead, CEC staff are proposing assigning PCC 2 RECs the GHG emissions intensity of the substitute power, and if the substitute power is unknown, assigning the default GHG emissions intensity for unspecified electricity. The CEC's approach also differs between "power content" reporting and "GHG intensity" reporting, utilizing PCC 2 resources for the former but actual imported substitute power for the latter.

In the case of CARB regulation, the Cap-and-Trade Program has an optional RPS adjustment that may be claimed for purposes of calculating the compliance obligation in cases where an LSE can show that renewable energy was not directly delivered to California but was purchased by the LSE, which in turn owned and retired the REC. These requirements are not met by all PCC 2 resources.

In addition, this adjustment to an entity's compliance obligation in the Cap-and-Trade Program does not change how emissions from firmed and shaped contracts are counted under CARB's mandatory reporting regulation (MRR). When CARB assesses progress toward the 2030 GHG emissions reduction goals through the emissions inventory, one of the bases is MRR. This assessment is done based on total reported emissions, not an individual entity's or even an individual sector's compliance obligations.

Aligning the PSDP approach with the CPUC and CARB treatment results in a consistent methodology for assigning GHG emissions to various electricity products that are not directly delivered into the state. This consistency is critical to ensuring that the various GHG accounting approaches used by different

agencies do not operate at cross-purposes or create significant discontinuities. Such an outcome is laudable and represents meaningful progress by the CPUC, CEC, and CARB.

The staff proposal offers a description of "firmed and shaped" imports that requires additional clarification to comport with the requirements adopted by the Public Utilities Commission for use of such products to comply with the Renewables Portfolio Standard program. Specifically, the description omits the following requirements:

- At the time the contract is executed, the renewable generator must not have committed its electricity for sale to another buyer.

- The initial contract for substitute energy must be acquired prior to the initial date of generation of any RPS-eligible energy under the terms of the contract.

- Any RECs may not be unbundled and transferred to another owner.

- All deliveries of substitute energy must occur within the same calendar year.

To avoid any confusion, TURN and Sierra Club recommend referencing the "firmed and shaped" RPS eligible requirements adopted in D.11-12-052.[7]

[7] CPUC Decision 11-12-052, Ordering Paragraph #2 ("A retail seller claiming that procurement for compliance with the California renewables portfolio standard from a contract or ownership agreement signed, or utility-owned generation in commercial operation, on or after June 1, 2010 counts in the portfolio content category described in new Pub. Util. Code § 399.16(b)(2), must provide information to the Director of Energy Division sufficient to demonstrate that the generation from that facility is firmed and shaped with substitute electricity scheduled into a California balancing authority within the same calendar year as the generation from the facility eligible for the California renewables portfolio standard, and that the substitute electricity provides incremental electricity, if the following conditions are met:

The Revised Staff Proposal includes a new grandfathering provision allowing contracts for "firmed and shaped" resources executed prior to February 1, 2018 to be classified according to the emissions profile of the renewable generator that provides the associated RECs.[8] The grandfathering provision is intended to recognize historic commitments made to firmed-and-shaped resource contracts by retail suppliers. While not believing that the grandfathering treatment is warranted, TURN and Sierra Club understand the desire to adopt a compromise on this issue that applies to previously executed contracts.

In order to limit the potential for gaming of contracts eligible for grandfathering, the Energy Commission should include other restrictions that were previously applied to the grandfathering of contracts for pipeline biomethane executed prior to March 29, 2012.[9] Specifically, the Energy Commission prohibited any extension to the term of the grandfathered contract, excluded any optional quantities that can be exercised at the discretion of the buyer, and prohibited any change in the sources specifically identified in the original contract.[10] Applying these same limitations to "firmed and shaped" contracts executed prior to February 1, 2018 would limit the potential for retail suppliers to exercise any

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- the buyer simultaneously purchases energy and associated RECs from the RPS-eligible generation facility without selling the energy back to the generator at the same time;
- the purchased energy must be available to the buyer (i.e., the purchased energy must not in practice be already committed to another party);
- the initial contract for substitute energy is acquired no earlier than the time the RPS-eligible energy is purchased and no later than prior to the initial date of generation of the RPS-eligible energy under the terms of the contract between the buyer and the RPS-eligible generator.

The retail seller must also demonstrate that the renewable energy credits originally associated with the electricity have not been unbundled and transferred to another owner, and that all other requirements for procurement for compliance with the California renewables portfolio standard are met by the procurement.")

[8] Revised Staff Proposal, page 36.

[9] These requirements are described in the RPS Eligibility Guidebook, 9th Edition, pages 7-9.

[10] These changes were required pursuant to AB 2196 (Chesbro) and codified in Cal. Pub. Util. Code §399.12.6(a)(2).

optional provisions that effectively extend the term, quantities or scope of the original agreement.

III. ELECTRICITY SOURCES SERVING PRIVATE CONTRACTS

The Revised Staff Proposal would allow retail suppliers to attribute unique resources procured to serve individual customers (via private contracts) to the overall portfolio of resources disclosed to all customers.[11] The Revised Staff Proposal explains that this treatment would appropriately "simplify reporting requirements" and that retail sellers may "supplement" the power content label for individual customers on whose behalf these unique resources were procured.[12]

TURN and Sierra Club recommend that the proposal be revised to prevent retail suppliers from including privately contracted resources serving individual customers in their overall portfolio of resources. Alternatively, retail suppliers could be directed to submit separate portfolios that assign privately contracted resources to a unique portfolio serving the individual customer.

Including resources procured for an individual customer in the portfolio disclosed to all customers could result in double counting and violate the requirements of §398.4(k)(2)(E). Individual customers entering into private contracts for unique resources are likely to claim credit and make claims based on the attributes procured on their behalf. The Revised Staff Proposal would permit a different customer served by the same retail supplier to make claims for a share of the unique resource that was not actually procured on their behalf (but is included in the single portfolio reported to the Energy Commission under the PSDP). The proposed treatment could result in aggregated claims that exceed

[11] Revised Staff Proposal, page 23.
[12] Revised Staff Proposal, page 23.

100% of procurement from the unique resource. This outcome constitutes impermissible double counting and should be avoided.

If the proposal to require retail suppliers to submit a single portfolio is maintained, the Energy Commission must adopt a prohibition on any individual customer claiming more than their *pro rata* share of any specific resource included in the retail supplier portfolio. Alternatively, any specific contracts not used to serve all customers of the retail supplier should be excluded from the portfolio submitted under PSDP, and any individual customer entering into a specific contract should be permitted to make power mix and environmental claims based on the content of the unique resources procured on their behalf.

IV. THE PROPOSED GHG INTENSITY ADJUSTMENT FOR SAN FRANCISCO PURSUANT TO §398.4(K)(2)(D) SHOULD NOT ALLOW RETROACTIVE CREDITS FOR GENERATION OCCURRING PRIOR TO 2019

The Revised Staff Proposal makes minor changes to the adjustment authorized by §398.4(k)(2)(D) and applies to the San Francisco Public Utilities Commission (SFPUC). This provision permits SFPUC to carry over procurement of zero GHG electricity that exceeds total retail sales so long as any excess is not resold as a specified source. The proposal would permit SFPUC to begin the accumulation of surplus credits for generation occurring after January 1, 2017 rather than after January 1, 2019.[13]

TURN and Sierra Club urge the Energy Commission to eliminate the ability of SFPUC to seek surplus GHG credit for production occurring prior to the 2019 calendar year when the new PSDP requirements will take effect. The relevant provision of AB 1110 reference to "previous years" should be understood to permit excess generation starting in the first year of the new program to be

[13] Revised Staff Proposal, page 37.

applied to subsequent years. It would be inappropriate to permit SFPUC to reach back to generation occurring prior to 2019 for the purpose of establishing its 'bank' since no PSD program GHG reporting requirements applied to those prior years.

The Revised Staff Proposal does not explain the basis for allowing SFPUC to begin accumulation of GHG adjustments associated with 2017 production (rather than 2019 production). The net effect of this change would be to ensure that SFPUC can establish a bank of excess GHG credit prior to the new GHG emissions disclosure requirements taking effect. There is no justification for this change, and it should be reversed.

Respectfully submitted,

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