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Comments of CMUA on the Draft Modification of the 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: Power Source Disclosure - AB 1110 Implementation Rulemaking	Docket No. 16-OIR-05

COMMENTS OF THE CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION ON THE DRAFT MODIFICATION OF THE REGULATIONS GOVERNING THE POWER SOURCE DISCLOSURE PROGRAM

The California Municipal Utilities Association (CMUA) appreciates the opportunity to provide comments to the California Energy Commission (Commission) on the draft *Modification of Regulations Governing the Power Source Disclosure Program* (Draft Regulation), issued on September 6, 2019.

CMUA is a statewide organization of local public agencies in California that provide electricity and water service to California consumers. CMUA membership includes publicly owned electric utilities ("POUs") that operate electric distribution and transmission systems. In total, CMUA members provide approximately 25 percent of the electric load in California. California's POUs are committed to, and have a strong track record of, providing safe, reliable, affordable and sustainable electric service.

I. INTRODUCTION

The Power Source Disclosure (PSD) Program requires electricity retail suppliers to disclose the electricity sources in their products. The PSD Program was initially authorized by Senate Bill 1305 (Sher, 1997), which required electricity retail suppliers to disclose fuel mix information to retail customers in the form of a Power Content Label (PCL). Subsequent to this,

Assembly Bill (AB) 162 (Ruskin, 2009) and AB 2227 (Bradford, 2012) authorized amendments to the PSD. AB 1110 (Ting, 2016) authorizes further changes to the PSD, requiring electricity retail suppliers to disclose the greenhouse gas ("GHG") intensity of any electric product offered to customers. On September 6, 2019, the Commission issued a *Modification of the Regulations Governing the Power Source Disclosure Program*. On October 7, 2019, the Commission administered a workshop to address the proposed changes.

CMUA agrees that these most recent revisions represent a move in the right direction, improving the appearance and transparency of the label. CMUA also agrees with the proposal to grandfather firmed-and-shaped power and to apply this provision to both purchased and owned resources. However, the Commission should modify the Draft Regulation to enable the attributes of renewable energy credits to be recognized in the PSD by including those megawatt hours in the actual technology type associated with the unbundled REC, consistent with the requirements under California's Renewable Procurement Standard. The purpose of the PCL is to provide "accurate, reliable, and simple to understand information on the sources of energy, and the associated emissions of greenhouse gases, that are used to provide electric services" to retail electric customers.[1] In order to ensure that customers receive valuable and simple to understand information, the Commission must consider the role of the PCL in the context of information that customers receive regarding similarly aligned programs, such as the Cap and Trade program (administered by the California Air Resources Board (CARB)) and renewables portfolio standard (RPS). To the extent that these disparate programs rely on different sources of data, different definitions, different assumptions, and different counting rules, it becomes impossible for a

[1] Cal. Pub. Util. Code § 398.1(b).

customer to assign any relative value to this information individually or collectively. The more these programs diverge, the greater opportunity for confusion.

Additionally, the Commission should modify the timeline mandated in the Draft Regulation. Because the Commission failed to comply with the deadline to provide and approved a revised regulation, the Draft Regulation effectively imposes regulatory changes on retail sellers retroactively, forcing some retail sellers into a position of non-compliance. Further, the deadline for delivering the PCL to customers should be moved in order to provide utilities reasonable time after the Commission publishes the annual PCL template.

II. COMMENTS ON DRAFT REGULATION

A. CMUA Supports the Grandfathering Provision for Purchased and Owned Firmed and Shaped Resources

The Draft Regulation includes a "grandfathering provision" applicable to existing firmed-and-shaped agreements.[2] Under this provision, "firmed-and-shaped products under a purchase agreement or ownership agreement, executed prior to January 1, 2019, shall report GHG emissions associated with the delivered electricity and shall identify these emissions as excluded from the calculation of emissions intensity of the electricity portfolio."[3] This provision will protect existing investments in firmed-and-shaped resources and protect ratepayers from unnecessary costs. CMUA strongly supports this change and urges the Commission to adopt this provision.

B. Unbundled Renewable Energy Credits Should Categorized as Eligible Renewable Power

CMUA suggests the Commission reconsider the approach to incorporating unbundled Renewable Energy Credits in the calculations for the PCL. California's Renewables Portfolio

[2] Draft Regulation, § 1393(d)(1).
[3] *Id.*

Standard (RPS) program establishes RPS compliance eligibility for unbundled Renewable Energy Credits.[4] However, the Draft Regulation would not recognize the contribution that unbundled Renewable Energy Credits provide in supporting renewable energy development and RPS compliance. As California's retail providers move toward 60 percent renewable power procurement, the transactions for renewable energy will become even more complex. Fortunately, California has been a vital contributor to the development of the Western Renewable Energy Generation Information System (WREGIS), an institution established to track renewable energy purchases and to ensure that the attributes of a renewable energy purchase can only be counted once. However, excluding unbundled renewable energy credits used for RPS compliance contradicts the accounting policy of WREGIS and is inconsistent with California's RPS. The proposed exclusion would have California's retail providers make substantial RPS eligible purchases, on behalf of their customers, while also prohibiting the retail providers from reporting the renewable characteristics of these RPS purchases on their PCLs.

CMUA suggests that the Commission follow a reporting process for unbundled renewable energy credits, wherein the attributes of the renewable energy underlying the renewable energy credit are incorporated into the electricity portfolio.

C. The Deadline for Delivering the PCL Should Be Delayed

AB 1110 requires that the Commission "*On or before January 1, 2018,* adopt guidelines, through an open process, subject to public comment, and adopted by a vote of the Energy Commission, for the reporting and disclosure of greenhouse gas emissions intensity associated with retail sales based on the requirements of this subdivision."[5] AB 1110 follows by stating that

[4] Public Utility Code §399.16.
[5] Public Utility Code §398.4 (k)(2)(F)(i) (emphasis added).

retail suppliers shall "report data on greenhouse gas emissions intensity associated with retail sales occurring after December 31, 2018."[6] AB 1110 establishes a timeline in which the Commission must adopt revised guidelines at least one year before the sales year on which emissions intensity would be first reported. In doing so, the legislature clearly recognized the need for retail sellers to plan for the procurement and marketing required for compliance with the regulation. However, if the Draft Regulation is adopted November 13, 2019, the Commission will not only have failed to comply with the timeline established in AB 1110 but will also retroactively impose a regulatory requirement, and as a result put some retail sellers in the position of being unable to comply with the Draft Regulation. For example, some retail sellers have provided and marketed voluntary programs beginning January 1, 2019 in a manner consistent with the regulation at the time. However, the Draft Regulation requires that any retail product claim by a retail seller be consistent with the GHG emissions intensity disclosed on the relevant PCL.[7] The Draft Regulation would apply regulatory changes retroactively and in so doing would leave some retail sellers with no compliance pathway. Retail sellers that have appropriately developed and marketed specific products or programs consistent with the regulation that was applicable at the time, because of the retroactive application of the Draft Regulation, would be required to report the information about these programs in a manner inconsistent with the original marketing of the programs. CMUA recommends that the Draft Regulation be modified to recognize the one-year adjustment period provided in AB 1110 and provide retail sellers the needed time to modify their procurement and marketing strategies to be consistent with the regulatory changes.

[6] *Id.*
[7] Draft Regulation § 1394.1(a)(2).

The Draft Regulation additionally stipulates that the PCL shall be provided to customers by August 30th of each year.[8] To meet this deadline, utilities would need to prepare the label no later than July 15th of each year. In order to do this, utilities would need to receive the PCL template by mid-June of each year. Unfortunately, the Commission has not always provided the template by this date. For example, and as noted in comments by the Anaheim Public Utilities Department, the 2018 PCL template was not published until August 5, 2019.[9] The Commission cannot reasonably expect utilities to perform the calculations, gain needed internal review, develop the printer proofs, and provide current PCLs to customers by August 30th of each year if it receives the PCL template and system power data later than June of each year. CMUA recommends that the Draft Regulation be modified to reflect a deadline of October 31st of each year. Such a modification will provide utilities an appropriate time to develop their PCLs after the Commission publishes the PCL template.

III. CONCLUSION

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

Dated: October 28, 2019

Respectfully submitted,

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FRANK HARRIS
Manager of Energy Regulatory Policy
California Municipal Utilities Association
915 L Street, Suite 1210
Sacramento, CA 95814
(916) 326-5807
fharris@cmua.org

[8] Draft Regulation § 1394.1(b)(2).
[9] Anaheim Public Utilities Department Comments submitted October 17, 2019, at 4.