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Comment on Defining Eligible Electricity Sources Under SB 100

Additional submitted attachment is included below.

January 24, 2020

California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Docket 19-SB-100

RE: Comments of the California Hydropower Reform Coalition on Defining Eligible Electricity Sources under SB 100

The California Hydropower Reform Coalition appreciates the opportunity to provide comments on defining eligible electricity sources under SB 100. We are generally supportive of the direction that the California Energy Commission, California Public Utilities Commission, and California Air Resources Board are moving. We would like to suggest one additional important criterion for eligibility.

The California Hydropower Reform Coalition believes that any technology eligible for inclusion in either the Renewable Portfolio Standard or the Zero-Emission Generation standard, if it results in a discharge into a water body, should be required to have a valid Clean Water Act Section 401 water quality certification from the state in which the generation is located. This is an important safeguard to ensure that clean water is not harmed by energy generation as California moves toward 100% clean energy.

Energy generation can have serious adverse consequences for water. Energy generation can divert water around entire sections of river, leaving them dry or alternating between unnatural drought and flood-like conditions. It can also alter the temperature and chemical makeup of water, harming the biological integrity of aquatic ecosystems.

To have a truly clean energy supply, California must ensure that the resources it counts are not having unintended impacts. Likewise, if certain energy generation facilities that discharge into water bodies want to be counted as RPS or zero-emissions eligible, they should have to prove that they meet the laws and standards for clean water in the state in which they are located.

After SB 100 became law, the landscape for water quality certifications shifted dramatically with the D.C. Circuit Court decision in *Hoopa Valley Tribe v. FERC*, 913 F.3d 1099 (D.C. Cir. 2019). For 40 years prior to the Hoopa decision, all federally licensed projects that had the potential to discharge into a water body were required to obtain a 401 water quality certification when renewing their federal license. However, the Hoopa decision is likely to create a class of generation projects that no longer must have 401 water quality certifications as a condition of their federal licenses. The impacts to water quality remain, but the state oversight and mitigation measures have been stripped away.

The RPS rules for incremental hydropower already require a valid 401 water quality certification for eligibility. We think it is reasonable to extend this eligibility requirement to other categories of RPS-eligible generation and to zero-emissions generation as well. Doing so will help ensure a truly clean energy supply.

Sincerely,

Dave Steindorf
Chair, California Hydropower Reform Coalition

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