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SFPUC Comments on 15-Day Comment Package for POU RPS Regulations

Attached please find the comments of the San Francisco Public Utilities Commission on the 15-Day Comment Package of the CEC in this proceeding.

Additional submitted attachment is included below.

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California Energy Commission
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Comments of the City and County of San Francisco Public Utilities Commission (SFPUC) on the California Energy Commission's (CEC's) 15-Day Language Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities

RECOMMENDED CHANGE TO PROPOSED REGULATIONS: The CEC should clarify in its Regulations that a POU can participate in both the green tariff and LCFS programs without the need to "double retire" Renewable Energy Credits (RECs) and that this does not constitute a "monetization." Corresponding changes to the Final Statement of Reasons (FSOR) should be made.

Dear Sir/Madam:

The City and County of San Francisco (San Francisco), acting through the San Francisco Public Utilities Commission (SFPUC), is strongly concerned that the green tariff provisions of Public Utilities Code Section 399.30(c)(4) are caught in a "Catch 22" situation between contradictory findings of the California Air Resources Board (CARB) and the CEC in this regulatory proceeding. If adopted as proposed, the impact of the CEC staff's interpretation will result in significantly increasing the cost of Publicly Owned Utilities (POUs) participation in CARB's Low Carbon Fuel Standard (LCFS) program; reducing or eliminating the incentive to participate in a program meant to reduce the carbon intensity of the transportation sector.

San Francisco appreciates the opportunity to provide the following comments summarized here and explained in detail below:

- The CEC staff's interpretation appears to be based on an incorrect interpretation of the term "monetized" in Section 399.30(c)(4).
- It is a customer's participation in a green tariff program that provides the financial value. The REC itself is not monetized, it only documents that the customer met the green tariff requirements.
- Even accepting the CEC's staff interpretation that the REC is being monetized, Section 399.30(c)(4) only prohibits any "further" or secondary monetization of the REC to avoid an entity from receiving double value for the same REC.
- it is unclear if the prohibition against any "further" or "otherwise" monetization of a REC is even applicable to the customer, but only applies to the POU.
- The CEC should recognize that POUs are not subject to the same requirements as the Investor-owned utilities (IOUs) for green tariff and LCFS programs

A comparison of CARB and CEC applicability of the Green Tariff and its effect on achieving California's GHG-reduction goals

CARB, after a lengthy 6-month process involving thousands of pages of comments,[1] modified its LCFS program to allow a utility's customers to participate in a green tariff program to document that they were providing greenhouse gas (GHG)-free energy to power electric vehicles (EVs) and other electric transportation. As described in their rulemaking, this would be a one-for-one reduction. A utility providing 100 MWh of green tariff energy to a LCFS customer would receive a LCFS credit based on the full 100 MWh delivered. Slightly over a year later, in this proceeding, the CEC's proposed interpretation of the green tariff provisions of Public Utilities Code Section 399.30(c)(4) in this proceeding eliminates this incentive. CEC staff incorrectly assert that a green tariff customer could still participate in the LCFS program but only by "double retiring" RECs, one REC to meet a green tariff obligation and another to meet the LCFS obligation. As noted in the SFPUC's opening comments filed on June 22, 2020 (p. 5) in this docket, this outcome significantly increases the cost of LCFS participation and negates any advantage for a customer to participate in a green tariff. This approach is also statutorily precluded for an IOU's green

[1] The Initial Statement of Reasons in CARB's 2018 LCFS rulemaking was 365 pages and the Final Statement of Reasons was an additional 1,331 pages. This does not include the regulation itself, nor the comments submitted.

tariff customers who are prohibited from procuring more than 100% of their energy needs from a green tariff.[2]

At risk under the CEC's proposed interpretation of Public Utilities Code Section 399.30(c)(4) is the ability of California to meet its GHG reduction goals from the transportation sector including Governor Newsom's goal of putting five million electric vehicles (EVs) on the road by 2030. The ability of a customer to voluntarily sign up and use a green tariff to fuel EVs and other transportation electrification as approved by CARB increases the amount of LCFS revenues they receive by about 40%.[3] This provides significant additional revenues to promote transportation electrification. CARB noted that this change "offers significant opportunity for Carbon Intensity reductions"[4], This increased revenue would be significantly reduced or perhaps even eliminated under the CEC staff's proposal.

As the CEC itself concluded in its just adopted 2019-2020 Investment Plan Update for the Clean Transportation Program:

> LCFS revenues complements the investments of the Clean Transportation Program by creating market incentives for near-term GHG reductions, allowing the Clean Transportation Program to focus more resources on longer-term market transformation goals.[5],

Adoption of the CEC staff's interpretation of the green tariff LCFS interaction would reduce the amount of these revenues, making it more difficult for the CEC to achieve its goals to help California eliminate its forecasted 81,000

[2] Public Utilities Code Section 2833(g)/

[3] California Air Resources Board Initial Statement of Reasons for the Innovative Clean Transit Program (Appendix H – Low Carbon Fuel Standard Program and Examples.).

[4] CARB LCFS ISOR, p. EX-4.

[5] 2019-2020 Investment Plan Update for the Alternative and Renewable Fuel and Vehicle Technology (CEC-600-2018-005 CMF) adopted December 16, 2019, p. 34

shortfall in EV chargers[6], electrify California's mass transit buses,[7] and promote the development of hydrogen as a fuel source[8].

Given the importance to California and the CEC of achieving these GHG-reduction goals, the SFPUC wishes to work with the CEC to resolve this Catch-22 situation and offers the following concerns.

it is a customer's participation in a green tariff program that provides the financial value. The REC itself is not monetized, it only documents that the customer met the green tariff requirements.

The relevant portions of Section 399.30(c)(4) state that:

> Beginning January 1, 2014, in calculating the procurement requirements under this article, a local publicly owned electric utility may exclude from its total retail sales the kilowatthours generated by an eligible renewable energy resource that is credited to a participating customer pursuant to a voluntary green pricing or shared renewable generation program…Any renewable energy credits associated with electricity credited to a participating customer shall not be used for compliance with procurement requirements under this article, shall be retired on behalf of the participating customer, and shall not be further sold, transferred, or otherwise monetized for any purpose… (emphasis added)

In its ISOR, the CEC staff focus on the requirement that a REC cannot be "further…or otherwise monetized" to conclude that a green tariff customer cannot participate in the LCFS program. This is incorrect.

The CEC seems to assume that RECs generate LCFS credits thereby leading to monetization of the RECs. Instead, it is the participation by the customer in a green tariff program that is generating the LCFS credits based on the relative

[6] Ibid., p. 48

[7] CARB estimated that an electric bus would generate about $10,000/year in LCFS revenues, providing about 10% of the total lifetime cost of ownership. (Attachment B, Supplemental to Economic Impact Assessment in CARB's November 9, 2018 15-Day Comment packet for the Proposed Amendments to the Innovative Clean Transit Program.) These numbers appear conservative as they assume a LCFS credit price of $100, about ½ of 2019 prices. Providing an additional 40% LCFS benefit through use of a green tariff would further improve the economics of this conversion.

[8] The green tariff option would also be available for producing hydrogen as a transportation fuel.

carbon intensity of a fuel source. Under the LCFS program, RECs only serve to document that a customer is in a green tariff program, but the RECs themselves do not generate the LCFS credits, it is the participation in the green tariff that does so. This is a critical distinction.

As noted by the SFPUC in its opening comments, and confirmed by the CEC's own regulations and reports, there are significant financial benefits (i.e., monetization) available for a customer participating in a green tariff program. These include but are not limited to meeting new Title 24 building requirements,[9] increased rents from buildings that are LEED certified[10], green marketing opportunities, and of course LCFS participation.
All of these activities are the results of the customer participating in a green tariff program. Underlying every green tariff program, as required by statute, is the underlying REC itself that is retired.

Throughout this proceeding, the CEC has failed to distinguish why some of these activities (such as using a green tariff to meet Title 24 regulations) do not constitute monetization while others (such as LCFS participation) do. Underlying both programs are RECs that are being retired to support a green tariff program. There is neither documentation in the rulemaking nor statutory support to make these distinctions.

Strictly applied, the CEC's interpretation would mean that all of these activities are not eligible, significantly hindering the fundamental goal of Section 399.30(c)(4) to increase green tariff participation.

Section 399.30(c)(4) states that RECs associated with a green tariff program are being "retired on <u>behalf</u> of the participating customer"[11] and "designated for the <u>benefit</u> of participating customers."[12] Thus this section clearly envisions

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[9] Frequently Asked Questions 2019 Building Energy Efficiency Standards states that: "Importantly, the 2019 Standards allow community-scale PV as an alternative renewable resource to onsite PV systems, when approved by the Energy Commission. Community-scale PV systems can range from a few kW to a few MW. The equipment costs for these systems are even lower than rooftop, in the $2-per-watt range."
[10] At the time of this filing, the CEC's web-site was being reorganized with "some website links …broken in the process." The CEC's web-site should have linked to "The Economics of Green Building", prepared by the U.C. Berkeley Program on Housing and Urban Policy which concluded "that: buildings with green ratings in 2009 command higher rental rates and occupancy rates, and command transaction prices that are substantially higher than those of otherwise identical office buildings." (p. 4)

that the customer is entitled to the corresponding benefits of green tariff participation.

<u>Even if there is a monetization, Section 399.30(c)(4) only prohibits the "further…or otherwise monetization of the REC.</u>

As noted above, it is a customer's participation in a green tariff program that provides the economic benefits. However, even accepting CEC' staff's incorrect interpretation that it is the RECs that are being "monetized", , consistent with both the statute and CARB's LCFS regulations, is that all of the above activities represent only an "initial" monetization of green tariff participation.[13] What is prohibited in Section 399/30(c)(4) is that there will be no additional or secondary monetization of these benefits. Section 399.30(c)((4) only requires that RECs "shall not be <u>further,,,</u>or <u>otherwise</u> monetized for any purpose "

The on-line Oxford English Dictionary[14] defines "otherwise" as; "In circumstances different from those present or considered"; "In other respects; apart from that"; and "In a different way. Each of these definitions identify "otherwise" as an additional or secondary use, in addition to its first or primary usage. The CEC's regulation uses the term "further" monetized, which implies again an additional usage.

Under this interpretation, the CEC staff's conclusion that green tariff participation in a LCFS program constitutes "further monetization" is not supportable either in statute or by their own regulation.

The latest version of the proposed regulations defines "monetize" as "receiving revenue or other *financial* value." [15] Of note, this definition was changed in the latest version to clarify that it is "financial value", and not just any "value" that constitutes monetization. This change reconfirms that no "monetization" occurs just by a customer signing up to help California achieve its environmental goals. The rates charged by the electric utility for providing a green tariff are also not a "monetization." [16]

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[14] https://www.lexico.com/en/definition/otherwise
[15] CEC Proposed Regulation Section 3204(b)(9)(b)(3).
[16] Proposed Section 3204(b)(9)(B)(3)(i).

What is troubling is that the accompanying Initial Statement of Reasons[17] goes a step further and incorrectly concludes that:

> This definition would preclude a POU from retiring RECs on behalf of the participating customer for both the RPS retail sales reduction and participation in CARB's Low Carbon Fuel Standard (LCFS) program, as it currently exists. RECs retired for purposes of the current LCFS are used to substantiate claims of low-carbon electricity and factor into the determination of LCFS credits, which have a monetary value accrued to a specific entity and represent a further monetization of retired RECs. (emphasis added)[18]

Significantly missing from this conclusion, however, is the lack of any "initial" monetization of the REC, thus making it impossible for there to be any "further monetization." As stated in the proposed regulations, green tariff sales are "excluded from" and not "subtracted from" the utility's RPS compliance obligation. Thus, they are not "used for", "credited to" or applied to" meeting the utility's RPS obligation. Excluding RECs used to support a green tariff program from RPS is also not a "monetization", and if it were, then every subsequent use of a green tariff for any purpose that provides financial value would then also be a "further monetization."

The ISOR also reconfirms that the REC is being retired as part of a green tariff program to in turn "substantiate claims of low carbon electricity." This is no different from a developer using a green tariff to "substantiate claims of meeting a rooftop solar requirement" or a landlord "substantiating claims that it met LEED requirements."

CARB's treatment of RECs pursuant to the Green Tariff Shared Renewables program supports SFPUC's position

A better interpretation of "otherwise monetized" is that a customer can use green tariff participation for its participation in only one other program, and that any additional usage constitutes "double counting" and is prohibited. Thus, a customer could use green tariff participation to meet either Title 24 standards or LCFS participation but not both.

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[17] California Energy Commission Initial Statement of Reasons for the Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities, (hereinafter referred to as CEC RPS ISOR), p. 31.
[18] CEC RPS ISOR, p. 30.

In the last round of comments to CARB in its LCFS rulemaking, the City and County of San Francisco (CCSF), on behalf of the SFPUC, specifically asked CARB to amend its regulations to clearly specify that:

> Any Renewable energy electricity certificates or other environmental attributes associated with the energy that is in addition to that needed for compliance with the California Renewables Portfolio Standard… are retired and not claimed under any other program with the exception of the federal RFS <u>and to verify green tariff claims.</u>[19]

While CARB did not make this change (probably because it would have required CARB to engage in another 15-Day Comment period), CARB stated that its intention was to ensure that;

> …[T]he environmental attributes are not double claimed, i.e., <u>matched to other (non-transportation) end uses</u>. Staff has clarified that the prohibition on double counting does not include CPUC reporting for the Green Tariff Shared Renewables program.[20]

This definition fully comports with the "otherwise monetized" prohibition in Section 399.30(c)(4) in that green tariff participation, and the associated REC retirement is limited to being applied by the "end-user" (i.e. customer) to only one other program that provides economic benefits.

<u>The CEC's interpretation of the phrase "otherwise monetized" is inconsistent with the plain language of Public Utilities Code Section 399.30(c)(4)</u>

There is a threshold question as to whether the green tariff provisions (Section 399.30(c)(4) even applies to a POU customer or instead only restricts the ability of the POU and not the customer to "sell, transfer, or otherwise monetize" the REC. The entirety of Section 399.30[21], which covers the entire POU RPS program, only addresses what POUs (or their governing bodies) "shall" or "may" do to meet their RPS obligations. Nowhere in Section 399.30

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[19] CARB Final Statement of Reasons (FSOR) for Amendments to the Low Carbon Fuel Standard Regulation and to the Regulation on Commercialization of Alternative Diesel Fuels, November, 2019. (CARB LCFS FSOR) p. 169-170.

[20] CARB LCFS FSOR, p. 170

[21] This section in turn is located in Division 1 of the Public Utilities Code entitled "Regulation of Public Utilities."

is there any discussion or limitation as to what activities a POU's customers are or are not allowed to do.

This leads to the conclusion that the limitation on "further…or otherwise monetized"[22] applies only to the POU and not the POU's customers. This is fully consistent with the language of Section 399.30(c)(4) which requires the POU to retire the RECs "on behalf of the participating customer." The RECs themselves are never transferred or received by the customer. Thus, it is only the POU that could engage in two of the three proscribed behaviors of further selling or transferring the RECs. It follows that the third proscription against "further monetization" is also applicable only to the POUs.

Comparisons of the POU Green Tariff Programs to the CPUC's Green Tariff Shared Renewables (GTSR) Program Must Account for Statutory Differences between the Programs

As the CEC is well aware, the CPUC and California's POUs derive their authority from different sections of the state Constitution and are governed by separate statutory requirements. From discussions with CEC staff, it appears that the CPUC has decided that its GTSR customers may not participate in the LCFS program. To the extent this is based on a policy decision of the CPUC under its separate authority it has no effect on a POU's customers ability to participate in both the green tariff and LCFS programs.

A major difference between the POU's green tariff provisions and the CPUC's GTSR program is that the GTSR program contains an additional restriction that the IOU's GTSR program must also participate in CARB's Voluntary Renewable Energy (VRE) program.[23] Thus there may be an additional statutory restriction precluding GTSR customer participation in the LCFS program.[24]

This is not a problem for a POU's green tariff. The VRE program is by definition "voluntary, and is neither needed nor required by statute for a POU's Green Tariff program.

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[22] Public Utilities Code Section 399.30(c)(4).
[23] Public Utilities Code Section 2833(v) requires that; "All renewable energy resources procured on behalf of participating customers in the participating utility's green tariff shared renewables program shall comply with the State Air Resources Board's Voluntary Renewable Electricity Program."
[24] This appears to have been confirmed by discussions with CARB, CEC, and CPUC staff,

POU's represent about one-fourth of California's electric customers, including many POUs such as the SFPUC that are active in electric transportation development. These POUs should be encouraged, not prohibited, from using their green tariffs to promote electric transportation. Community Choice Aggregators, which now serve significant portions of the remaining three-fourths of California customers should also be encouraged to promote LCFS usage.

CARB's VRE program will expire once all of the cap-and-trade allowances assigned to it are used.[25] At that time, the CEC should work with the IOUS and the CPUC to encourage LCFS participation, including changing CPUC policies as needed.

Conclusion

It is vitally important that California achieve its electric transportation and GHG-reduction goals. The SFPUC is hopeful that the CEC can resolve its interpretations of Public Utilities Code Section 399.30(c)(4) so that California, the CEC, and the SFPUC achieve these goals.

Please feel free to contact me if necessary at jhendry@sfwater.org or at (415) 554-1526 [office] or more quickly at (415) 867-9596 [cell].

Thank you for your consideration.

Sincerely,

JAMES HENDRY

[25] Sections 95831(b)(6) and 95870(c) of CARB's Cap-and-Trade Regulation set aside a percentage of allowances that are eligible to be retired for voluntary renewable electricity