

DOCKETED

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Earthjustice Comments on Compliance with Public Resources Code Â§ 25664 in the Clean Hydrogen Program

Additional submitted attachment is included below.



November 29, 2023

Energy Research and Development Division
California Energy Commission
715 P Street
Sacramento, California 95814

Submitted electronically to Docket 22-ERDD-03

RE: Compliance with Public Resources Code § 25664 in the Clean Hydrogen Program

Dear California Energy Commission Staff:

Earthjustice respectfully submits these comments to recommend the California Energy Commission (“CEC”) recognize the plain requirements of California Public Resources Code Section 25664 in its forthcoming solicitation documents for the Clean Hydrogen Program to assist applicants in proposing projects that are consistent with the statute. For purposes of AB 209’s Clean Hydrogen Program, Section 25664 limits financial incentives to “hydrogen projects that produce, process, deliver, store, or use hydrogen derived from water using eligible renewable energy resources, as defined in Section 399.12 of the Public Utilities Code, or produced from these eligible renewable energy resources.” This provision sets eligibility criteria for hydrogen production technologies that use water and certain other renewable feedstocks.

The first category of hydrogen projects that qualify for funding are those that involve hydrogen derived from water via a process powered by renewable electricity. Section 25664’s reference to “hydrogen derived from water using eligible renewable resources, as defined in Section 399.12” describes hydrogen that is produced by splitting water with certain renewable electric resources, as Section 399.12 defines “eligible renewable energy resource” to mean “an electrical generating facility” that meets specific criteria. CEC staff should recognize that Section 25664 only includes electrolytic hydrogen that is actually produced using eligible renewable resources—and not hydrogen produced using fossil-fueled grid energy. Applicants can demonstrate that they are using eligible renewable energy resources by taking electricity directly from co-located off-grid or behind-the-meter generation, or by relying on the electric grid in hours when renewables are the marginal units and would otherwise be curtailed. Some applicants may seek to use fossil-fueled grid electricity and claim to offset their emissions with renewable energy credits, but this type of offsetting scheme is not compatible with the plain language of the statute. It would also be improper for hydrogen producers to claim they are using renewable electricity that contributes to compliance with the Renewable Portfolio Standard

(“RPS”), as this would violate the CEC’s policies against double-counting renewable energy credits.¹

The second category of hydrogen projects the Clean Hydrogen Program may fund are those that produce hydrogen from RPS-eligible renewable energy resources. CEC staff should recognize that hydrogen produced from methane from the natural gas pipeline and paired with biogas credits via book-and-claim accounting does not meet the statutory criteria because such hydrogen is not “produced from” eligible resources as the plain language of Section 25664 requires. Section 25664 does not allow hydrogen producers to greenwash fossil-derived hydrogen through any type of credit-swapping scheme.

By confirming in the Clean Hydrogen Program’s solicitation documents that the program will only fund projects that meet these statutory criteria, staff may help applicants avoid submitting ineligible proposals. Thank you for considering these comments. I would be happy to discuss this matter further with you, and I can be reached at the address below.

Sincerely,
Sara Gersen
Senior Attorney, Clean Energy
Earthjustice
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¹ CEC, Renewables Portfolio Standard Compliance Period 3 (2017 - 2020) Verification and Compliance (Mar. 2023) at 14 (“A REC cannot be counted for compliance with the California RPS Program if it has been used to satisfy any other retail, regulatory, or voluntary market claim.”).