

DOCKETED

| | |
|-------------------------|---|
| Docket Number: | 16-OIR-05 |
| Project Title: | AB 1110 Implementation Rulemaking |
| TN #: | 216566 |
| Document Title: | Matthew Freedman Comments: The Utility Reform Network and The Coalition of California Utility Employees PSD Pre-Rulemaking Workshop |
| Description: | N/A |
| Filer: | System |
| Organization: | Matthew Freedman |
| Submitter Role: | Intervenor |
| Submission Date: | 3/15/2017 3:22:47 PM |
| Docketed Date: | 3/15/2017 |

Comment Received From: Matthew Freedman

Submitted On: 3/15/2017

Docket Number: 16-OIR-05

**The Utility Reform Network and The Coalition of California Utility Employees PSD
Pre-Rulemaking Workshop**

Additional submitted attachment is included below.

STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the matter of:

AB 1110 Implementation Rulemaking

)
)
)
)
)

Docket No. 16-OIR-05

COMMENTS OF THE UTILITY REFORM NETWORK AND
THE COALITION OF CALIFORNIA UTILITY EMPLOYEES
ON PRELIMINARY SCOPING QUESTIONS

Matthew Freedman
The Utility Reform Network
785 Market Street
San Francisco, CA 94104
415-929-8876 x304
matthew@turn.org

Marc D. Joseph
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd., Suite 1000
South San Francisco, CA 94080
650-589-1660
mdjoseph@adamsbroadwell.com

March 15, 2017

**COMMENTS OF THE UTILITY REFORM NETWORK AND
THE COALITION OF CALIFORNIA UTILITY EMPLOYEES ON
PRELIMINARY SCOPING QUESTIONS**

In response to the February 21, 2017 Notice of Staff Pre-Rulemaking Workshop on Updates to the Power Sources Disclosure Regulations, The Utility Reform Network (TURN) and the Coalition of California Utility Employees (CUE) submit these comments on the staff questions. TURN was the outside sponsor of AB 1110 (Ting) authorizing the changes to the Power Source Disclosure Program that are the subject of the upcoming rulemaking.

I. QUESTIONS RELATING TO ANNUAL SALES

The changes in AB 1110 that relate to “annual sales”, “electricity portfolio” and “electricity offering” are intended to address the ability of a retail supplier to offer different resource portfolios to their customers. Retail suppliers are increasingly offering voluntary products that include a higher percentage of electricity from renewable resources. The new language in AB 1110 is meant to clarify the ability of a retail supplier to create a separate Power Content Label for each portfolio offered to customers. Other changes to existing provisions were made to promote conformity of terminology.

For the purposes of the PSD program, “annual sales” means the total retail sales associated with each “portfolio” offered to customers. There is no difference between a “portfolio”, an “electricity portfolio”, “portfolio offering”, “electricity offering”, and “electric supply portfolio”. The Commission should treat these terms identically. Each term is intended to reference a portfolio of electricity resources sold to retail customers in the prior calendar year.

It remains unclear whether all retail suppliers report procurement quantities in a manner that incorporates line losses. To the extent that retail suppliers have

different reporting approaches, the Commission should adopt a single standard requiring procured quantities of electricity to be adjusted for line losses.

II. QUESTIONS RELATING TO RENEWABLE ENERGY CREDITS

The Commission must recognize that the enactment of AB 1110 was driven, in significant part, by the concern that some retail suppliers have made broad claims regarding the low GHG content of their electricity supply portfolios based primarily upon the purchase of unbundled Renewable Energy Credits (RECs). This practice has raised serious questions about the legitimacy of claiming that a customer can reduce, or eliminate, their carbon footprint simply by switching to a provider that relies heavily on relatively dirty system power coupled with the purchase of surplus RECs from existing facilities throughout the West.

The Commission should use the implementation of AB 1110 as an opportunity to enforce honest accounting protocols that do not permit this type of “greenwashing” to persist. Such an outcome is not only consistent with the overall intent of the bill, it honors the very specific guidance provided by the author to conform the PSD program methodology to the approaches taken by the Air Resources Board under the Mandatory Reporting Requirements and Cap and Trade.¹

- 1. Should retail suppliers be required to report the purchase of eligible renewable energy resources based on the year that the renewable electricity was generated or based on the year that the REC is retired, if the two years differ?*

Retail suppliers should report the purchase of eligible renewable energy resources based on the year in which the electricity was generated and physically procured to serve customers. The date of REC retirement within the WREGIS

¹ AB 1110 letter to the Assembly Journal, Assembly Member Phil Ting, August 31, 2016.

system should not have any impact on the format and substance of reporting within the PSD program.

Although RPS program rules permit the compliance value of such procurement to be delayed up to 36 months after the date the electricity was produced, it would be inappropriate for the Commission to allow these delays to be incorporated into the PSD program. Permitting a retail supplier to decide which year to attribute renewable procurement for purposes of PSD disclosures would confuse customers and lead to incomplete reporting in certain years. For example, this approach would yield calendar years when total procurement for a given portfolio is less than, or exceeds, the total amount of electricity sold to customers. This result would be illogical and spur significant customer confusion.

2. How should firmed and shaped electricity products be categorized for the power-mix percentage calculations? Specifically, should these products be categorized based on the fuel-type of their REC or the fuel-type of their substitute electricity?

Consistent with the proposed treatment for unbundled RECs, “firmed and shaped” renewable electricity products should be separately identified for the power mix percentage calculations. The separate identifier could be titled “Category 2 renewable import” to reflect the unique attributes of this renewable energy product. Separate identification will also be important if the Commission assigns a non-zero GHG emissions intensity to this product.

Unlike other specified renewable generation purchases reported by retail suppliers, “firmed and shaped” products involve imports of unspecified electricity into California from throughout the West. The electricity imports do not need to be either sourced from the same region as the renewable generator or imported within the same day, week or month as the renewable generation

occurs. Indeed, it is possible to import all the electricity in a single month (or a week) from system resources used to “firm and shape” an entire year’s worth of output from an intermittent renewable generator. As a result, this product differs significantly from the direct real-time delivery of bundled electricity and the associated RECs from a renewable generator to a California retail supplier.

The separate classification of these transactions on the Power Content Label should explain (in a footnote) the fact that both the renewable generator and the imported generic electricity are sourced from outside California, may come from separate regions within the WECC, and are produced at different times or seasons. These clarifications will educate consumers about the different types of renewable energy products that retail suppliers include in their portfolios and ensure that complete information is available for purposes of comparison between providers.

- 3. How should greenhouse gas emissions intensities be calculated for firmed and shaped electricity products? Specifically, should the greenhouse gas emissions intensity for these products be calculated based on the emissions profile associated with the generation source of their REC or based on the emissions profile of their substitute electricity?*

Many retail suppliers assert that “firmed and shaped” renewable energy purchased from out-of-state intermittent generators should be treated as a zero GHG resource for purposes of disclosure to their customers. These transactions typically involve the transfer of RECs to the retail supplier and an unrelated import of unspecified power into the CAISO. The GHG attribution for these transactions remains complex and unresolved. The Commission should not adopt a specific treatment for these transactions prior to fully exploring the requirements of AB 1110, the existing and proposed treatment of such imports by the Air Resources Board (ARB), and relevant RPS program rules.

Under the existing Cap-and-Trade program, the ARB adopted an “RPS adjustment” that effectively eliminates any compliance obligation for “firmed and shaped” renewable imports used for RPS compliance and composed of unspecified electricity and the RECs from the out-of-state renewable generator. This mechanism is a feature of the current program and may be continued post-2020. However, there are several issues that the Commission must address before making any determination as to the proper GHG emissions intensity that should apply to these purchases.

Under both existing and proposed MRR regulations, any “firmed and shaped” imports eligible for the RPS adjustment must be used for compliance with the RPS program.² Procurement not credited towards RPS compliance is ineligible for the adjustment. Under the RPS statutory provisions, the combined procurement of “firmed and shaped” renewable energy and unbundled RECs is limited to no more than 25% of total compliance.³ Any procurement of these two renewable products in excess of the 25% limitation may not be either credited towards RPS compliance or banked for use in a future compliance period.⁴ The combination of these rules leads to the clear conclusion that the GHG emissions factor for procurement of “firmed and shaped” renewable energy that cannot be applied to RPS compliance should be based on the qualities of the specific electricity actually imported into California (rather than the out of state renewable generation facility that separately provides the RECs). This outcome preserves the ARB adjustment mechanism while recognizing its application only to renewable energy credited to RPS compliance.

² MRR regulation, §95111(g)

³ Cal. Pub. Util. Code §399.16. Since there is a 10% limit for the use of unbundled RECs, a retail supplier may meet up to 15% of its RPS obligation from “firmed and shaped” resources if the maximum unbundled REC allowance is utilized. If no unbundled RECs are applied to compliance, the retail supplier may satisfy up to 25% of the RPS obligation with “firmed and shaped” renewable energy.

⁴ Cal. Pub. Util. Code §399.13(a)(4)(B)(ii).

Furthermore, the ARB has identified instances where both the “firmed and shaped” import and the null power from the renewable generator are being treated as a zero GHG product under Cap-and-Trade.⁵ Specifically, the ARB explains that the existing RPS adjustment mechanism for “firmed and shaped” imports is

extremely difficult to track and enforce, in part because to avoid double counting the Regulation could only allow RPS adjustments to be taken in cases in which the electricity associated with the RECs was not directly delivered to California. It can be difficult for entities to know if the electricity was directly delivered, and there was also widespread misuse of the direct delivery requirement because of misinterpretations of the Regulation (e.g., that one could choose not to specify a source of imported electricity and then use the RECs associated with that electricity for an RPS adjustment). Further, when there are multiple purchasers of electricity and RECs from renewable resource, it is difficult to determine which RECs are associated with which electricity.⁶

This acknowledgement is troubling because it demonstrates that a single MWh of renewable energy production outside California may yield two separately imported MWh of electricity (one MWh of “firmed and shaped” electricity and another MWh of null power) that can be treated as having no GHG emissions. While ARB may be willing to accept this outcome within the context of its programs, the potential double counting problem associated with these purchases requires further study by the Commission.

AB 1110 establishes an independent obligation on the 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

⁵ “RPS Adjustment: Past and Future”, CARB staff presentation, December 14, 2015 (<https://www.arb.ca.gov/cc/capandtrade/meetings/20151214/rpssb350.pdf>)

⁶ Proposed Amendments To The California Cap On Greenhouse Gas Emissions And Market-Based Compliance Mechanisms, Staff Report: Initial Statement Of Reasons, August 2, 2016, page 53 (<https://www.arb.ca.gov/regact/2016/capandtrade16/isor.pdf>)

source located within the Western Electricity Coordinating Council”.⁷ In order to meet this obligation, the Commission must ensure that two key conditions are satisfied with respect to any “firmed and shaped” renewable import.

First, there must be a demonstration that the null power from the renewable generator was either not imported into California or was treated as an import of unspecified electricity subject to a Cap-and-Trade compliance obligation. Second, the retail supplier should demonstrate that any null power from the renewable generator not imported into California was also not claimed by any other buyer as a zero GHG electricity purchase. This demonstration may require signed attestations from an officer of the generation company confirming that no other buyer has made any environmental claims related to the null power.

Although these two demonstrations may appear cumbersome, they are essential to preserving the integrity of carbon accounting and preventing double counting of environmental claims to the maximum extent feasible. The Commission should consider what other measures may be necessary to prevent double counting consistent with the express requirements of AB 1110.

4. Should unbundled RECs (PCC 3) be reflected in the power mix or disclosed separately on the Power Content Label? What factors should be considered in making this determination?

The Commission should require retail suppliers to differentiate between bundled and unbundled REC procurement on the Power Content Label. The original May 2015 draft PSD program regulations proposed that unbundled Renewable Energy Credits (RECs) should be listed as “REC only” purchases that are

⁷ 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.”)

separately displayed as a subcategory under “eligible renewables”.⁸ The addition of Public Utilities Code §398.4(h)(7) in AB 1110 was intended to permit the Commission to implement this draft proposal.

Under the current RPS program rules, unbundled RECs may be applied to compliance requirements subject to strict quantity limitations. Starting in 2017, retail suppliers may obtain no more than 10% of total RPS compliance from unbundled RECs.⁹ Many retail suppliers buy little or no unbundled RECs while some choose to use the maximum amounts permitted for RPS compliance and acquire substantial additional quantities for the sole purpose of making voluntary renewable energy claims relating to retail product offerings.

Despite the fact that retail suppliers vary significantly in their reliance on unbundled RECs, customers are generally unaware of these differences. Providing separate information about “REC only” procurement on the Power Content Label would assist customers in understanding the extent to which their retail supplier purchases the physical electricity from a renewable resource or relies upon unbundled certificates matched with unrelated system power purchases. “REC Only” purchases should be shown as renewable but distinguished as a separate product, consistent with the approach in the RPS program, in order to provide better information to retail customers.

This approach to disclosure is consistent with the National Association of Attorneys General (NAAG) marketing guidelines that recommend any retail claim based on the purchase of unbundled certificates should “be accompanied by a clear and prominent disclosure of the use of a tagging system to substantiate

⁸ Proposed §1391(c)(7), §1392(b)(3)(C).

⁹ Cal. Pub. Util. Code §399.16(c).

the claim.”¹⁰ NAAG further states that “marketers are cautioned to avoid making claims based on a tagging system that state or imply that the supplier has actually purchased the power itself – as opposed to its environmental attributes – from the preferred generators.”¹¹

Because the extent to which a retail supplier relies on unbundled RECs will affect the GHG emissions intensity of their electricity portfolio, the Commission should establish a separate line-item category to minimize potential customer confusion. Otherwise, customers may not understand why significant GHG emissions are assigned to the purchase of “renewable” energy.

Unbundled RECs are traded separately from GHG allowances in California. As a result, the purchase of unbundled RECs does not mean that any zero GHG attributes are transferred to the retail supplier. Retail suppliers in California typically match the purchase of unbundled RECs with system power produced by nonrenewable generation that must purchase GHG allowances pursuant to the Cap-and-Trade program. This fact means that there are demonstrated GHG emissions that can and should be assigned to such procurement. Unbundled RECs acquired from any facility in the WECC should not be understood to provide a negative offset that magically erases GHG emissions occurring when an electric generator located in California burns fossil fuels.

Conforming the GHG emissions intensity methodology to the rules adopted by the ARB would prevent a retail supplier from using unbundled RECs to claim that the purchase of system power yields no GHG emissions. The ARB programs and regulations do not recognize any GHG offset value for unbundled RECs. In adopting the Mandatory Greenhouse Gas Reporting Regulation, the ARB

¹⁰ Environmental Marketing Guidelines for Electricity, National Association of Attorneys General, December 1999, page 7.

¹¹ Environmental Marketing Guidelines for Electricity, National Association of Attorneys General, December 1999, page 7.

determined that treating RECs as a GHG offset would be contrary to the express requirements and the purposes of AB 32.¹² Specifically, the ARB notes that “for the emissions profile of electricity generated and procured, RECs play no role in GHG accounting.”¹³

The Commission must fulfill its obligation to ensure that accurate and meaningful information is provided to retail customers. Requiring the separate disclosure of “REC Only” procurement is consistent with this obligation and provides consumers with the ability to make informed choices. Declining to treat the purchase of unbundled RECs as a GHG offset is essential to ensuring consistency with the statewide approaches already developed under MRR and Cap-and-Trade.

5. How should null power be categorized for the power-mix percentage calculations? How should the greenhouse gas intensity of null power be calculated?

The Commission should use the same GHG emissions intensity for null power that ARB applies to unspecified power for purposes of compliance with Cap and Trade program obligations. However, the Commission should ensure that null power is separately reported if imported from different regions within the WECC consistent with the requirements of §398.5(a)(2).

III. QUESTIONS RELATING TO THE GHG INTENSITY FACTOR DATA AND CALCULATIONS

1. AB 1110 defines “greenhouse gas emissions intensity” as the “sum of all annual emissions of greenhouse gases associated with a generation source

¹² Final Statement of Reasons for Rulemaking Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions, California Air Resources Board, October 28, 2011, pages 108-09 (<http://www.arb.ca.gov/regact/2010/ghg2010/mrrfsor.pdf>)

¹³ *Ibid.*

divided by the annual production of electricity from the generation source." Are there any reasons to consider calculating GHG emissions intensities using greenhouse gases other than those accounted for in both MRR and the EPA's Greenhouse Gas Reporting Program?

Although the statute permits the Commission to calculate GHG emissions intensity using gases other than those counted under MRR, there is no compelling reason for the scope of reporting under the PSD program to be broader than under the primary state programs administered by the ARB to address and combat global climate change. Adding other gases to the calculation would only create an unnecessary disconnect between the PSD program and these other state programs.

2. What are the concerns, limitations, and benefits of relying on GHG emissions reported to the MRR program for the development of GHG emissions intensities for in-state and out-of-state facilities?

A primary limitation of the MRR program relates to the use of a default emissions factor for imports of unspecified power into California. This generic default is inaccurate and does not properly reflect the timing and location of generation. Moreover, there is no comparable factor that can be applied to purchases of unspecified electricity within California. Many retail suppliers rely heavily on purchases of unspecified power within the CAISO and other state balancing authorities.

3. Should GHG emissions classified as non-covered or exempt under the Cap and Trade Program be included in PSD greenhouse gas intensity calculations?

To support consistency between programs, GHG emissions that are classified as "non-covered" or "exempt" under the Cap and Trade program should not be included in the PSD GHG emissions intensity calculations. The only exception to this principle applies in a situation where concerns about double counting arise

(as described in response to questions about the treatment of ‘firmed and shaped’ imports).

4. Should the Power Disclosure Program adopt ARB’s default factor as the greenhouse gas intensity for unspecified power?

Subject to several caveats, the Commission should adopt the ARB’s default factor for the purpose of the PSD program at this time. The ARB currently applies a single generic GHG emissions factor (0.428 MT/CO₂e/MWh) for imports of unspecified power from other western states into California. There is no default GHG emissions factor for unspecified electricity purchased in California because these transactions are neither reported under MRR nor subject to Cap-and-Trade compliance obligations. If ARB updates or refines the default factor prior to 2020, the Commission should incorporate any revisions into the PSD program methodology.

The default factor was calculated in 2010 using data from 2008 for the entire western region. The ARB has not updated this default factor since that time and does not apply different emissions factors to imports from different regions (or within California) despite the fact that the generation mix for “unspecified” power can vary significantly in different Western subregions that supply California. The Commission has recognized that the mix of imports can vary substantially by region, noting that

much of the Pacific Northwest spot market purchases are served by surplus hydro and newer gas-fired power plants. The Southwest spot market purchases would be comprised of new combined cycle power and some coal.¹⁴

The language of AB 1110 explicitly recognizes the fact that there are differences in the GHG emissions intensity of various regions. A key provision in the bill

¹⁴ http://www.energy.ca.gov/almanac/electricity_data/total_system_power.html

requires retail suppliers to report, for each electricity product offered to customers, “the kilowatthours purchased from unspecified sources in California and from unspecified sources imported into California from other subregions within the Western Electricity Coordinating Council.”¹⁵ This new requirement will enable more granular reporting for unspecified imports by permitting the Commission to apply more accurate GHG emissions intensity factors (as available) to imports sourced from different regions.

The ARB is currently working with the California Independent System Operator to develop a comprehensive approach to measuring GHG emissions attributable to dispatch in the Energy Imbalance Market (EIM) that serves California. This approach is intended to permit real-time calculations of GHG emissions from all resources participating in the EIM.¹⁶ The new approach offers hope that California can move away from a system that relies on default GHG emissions factors and towards more real-time and real-world calculations. Although the development of such an approach is beyond the capabilities of the Commission in this proceeding, the PSD program should be ready to incorporate new methodologies that are developed by the ARB and CAISO and utilized for purposes of Cap-and-Trade.

Finally, the default GHG factor does not account for any variation by season or hour despite the fact that the mix of generating resources supplying “unspecified” electricity changes significantly based on timing. There is no question that the use of a single number to reflect GHG emissions in all hours of the year is inaccurate. If hourly GHG data becomes available, the Commission should be prepared to incorporate this information into the GHG emissions intensity calculation for each retail supplier.

¹⁵ Cal. Pub. Util. Code §398.5(a)(2).

¹⁶ <http://www.caiso.com/Documents/GreenhouseGasEmissionsTracking-Methodology.pdf>

5. *Energy procured through the Energy Imbalance Market (EIM) is reported under the MRR program as specified electricity. What greenhouse gas intensity factor should be assigned to electricity procured through the Energy Imbalance Market (EIM)?*

As explained in response to the prior question, the ARB is currently working with CAISO to develop a methodology to track GHG emissions associated with the EIM. The CAISO expects to be able to implement this new approach in the coming year. The Commission should incorporate the results of the ARB/CAISO methodology into the PSD program for purposes of assigning GHG emissions to any power attributed to the retail supplier via the EIM.

IV. QUESTIONS RELATING TO THE GHG INTENSITY ADJUSTMENT PURSUANT TO §398.4(K)(2)(D)

The adjustment authorized by §398.4(k)(2)(D) was included specifically to assist the San Francisco Public Utilities Commission (SFPUC). It does not appear to have general applicability and should not be understood to effect a wider set of retail suppliers. This provision was intended to permit SFPUC to carry over procurement of zero GHG electricity that exceeds total retail sales. In the event that SFPUC receives excess zero GHG electricity in a given year, and does not resell that excess to another entity as a specified source, §398.4(k)(2)(D) allows zero GHG credit to be rolled forward into a future year.

The specific situation that justifies this provision relates to SFPUC's procurement of electricity from the three powerhouses that comprise the Hetch Hetchy hydroelectric system. In certain years, SFPUC receives excess electricity from this system that cannot be used to serve customers and is resold as unspecified power into the wholesale market. To the extent that SFPUC has already achieved a zero GHG portfolio in that year, the Commission may permit additional GHG

reductions tied to the remarketed hydroelectric power to be 'banked' and applied to a future year.

The Commission should allow SFPUC to begin accumulating surplus credit no earlier than 2019 which represents the first year that electricity purchases are reported under AB 1110. These 2019 purchases will be reported in 2020 and used to create the new Power Content Label. It would be inappropriate to permit SFPUC to reach back to prior years for the purpose of establishing its 'bank' since there are no PSD program GHG reporting requirements applicable to those prior years.

In order to qualify for the treatment authorized in this provision, SFPUC should be required to submit documentation demonstrating that all relevant conditions have been satisfied including the sale of any surplus zero GHG electricity into the market as an unspecified resource. Moreover, SFPUC should only be permitted to add any zero GHG credit to its 'bank' in the event that it receives more than 100% of its retail sales in a given year from specified resources that do not emit GHGs. Consistent with recommendations made in prior sections, purchases of unbundled RECs should not be eligible to count as a zero GHG resource for purposes of this calculation.

Respectfully submitted,

MATTHEW FREEDMAN

_____/s/_____
Attorney for The Utility Reform
Network
785 Market Street, 14th floor
San Francisco, CA 94103
Phone: 415-929-8876

MARC D. JOSEPH

_____/s/_____
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd., Suite 1000
South San Francisco, CA 94080
Telephone: (650) 589-1660
Facsimile: (650) 589-5062
mdjoseph@adamsbroadwell.com
Attorneys for CUE

Dated: March 15, 2017