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Additional submitted attachment is included below.

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DOCKET: 16-OIR-05 (AB1110 Implementation Rulemaking)

**Comments of the San Francisco Public Utilities Commission (SFPUC) to
the Draft Staff Paper on Assembly Bill 1110 Implementation Proposal**

Dear Sir/Madam:

The SFPUC will be subject to AB1110's reporting guidelines both as a publicly-owned utility (POU) and as a community choice aggregator (CCA) through San Francisco's CleanPowerSF program. Although the SFPUC strongly supports the requirement to report the greenhouse gas (GHG) intensity of the electric energy used to serve California's electric customers, the SFPUC has the following concerns with the Draft Staff Paper. These concerns are:

- Failure to properly recognize the role of renewable energy credits (RECs) as a proper metric of GHG reductions achieved by retail sellers; and that the
- Failure to implement the AB 1110 requirement to recognize carry-over of excess zero-GHG generation that occurred prior to AB1110's first reporting period.

Each of these concerns is discussed below.

The Draft Staff Proposal fails to properly recognize the role of renewable energy credits (RECs) as a proper metric of GHG reductions achieved by retail sellers

A majority of the commenters on the CEC's Preliminary Scoping Questions on AB1110 urge the CEC to fully recognize the value of renewable energy credits (RECs) as a metric of zero-GHG emissions. This includes the California

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Community Choice Association (CalCCA), the California Municipal Utilities Association (CMUA) and the Center for Resource Solutions (CRS).

RECs embody the environmental attributes of the underlying generation and are used for verifying compliance with California's Renewables Portfolio Standard (RPS) requirements. California's RPS program in turn is the third largest source of GHG reductions identified in the AB32 Scoping Plan to achieve the GHG reduction goals of California's Global Warming Solutions Act.¹

Yet, rather than rely on the use of RECs to track GHG emissions intensity under AB1110, the CEC is instead proposing to use the California Air Resources Board (CARB) Mandatory Reporting Regulations for GHG reporting. These regulations are designed for the reporting of GHG emissions for energy producers rather than retail sellers.

As CalCCA notes in their comments:

Unless the proposal is significantly modified, the implementation of AB 1110 will inevitably create customer confusion, disrupt the electricity market, and subject electricity market participants to regulatory uncertainties and litigation risks.²

Adoption of the current CEC proposal could also lead to the double-counting of RECs.

As noted in the SFPUC's previous comments, any AB1110 reporting requirements should allow that:

- Renewable Energy Credits (RECs) should be credited toward calculating a Load Serving Entity's GHG intensity for the year in which they are retired;
- Portfolio Content Category 3 ("Bucket 3") RECs should be credited toward calculating a Load Serving Entity's (LSE's) GHG intensity and reported based on the renewable energy resource that created the REC;
- The GHG-intensity of Portfolio Content Category 2 ("Bucket 2") RECs should be calculated based on the associated renewable energy resource; and
- The GHG-intensity assigned by the California Air Resources Board (CARB) for energy from unspecified sources is a reasonable proxy for calculating GHG emissions.

¹ California Air Resources Board AB32 Scoping Plan, p. 21. RPS legislation accounts for 21.3 million tons out of a total of 146.7 million tons of planned GHG reductions.

² CalCCA Comments on Draft Staff Proposal, p. 1

As the CEC's rulemaking process is still in the informal phase, the SFPUC looks forward to working with CEC staff to address the above concerns.

The Carry-over of excess zero-GHG generation for the SFPUC is required to start prior to AB1110's first reporting period.

AB1110 requires that the CEC:

Shall establish guidelines for adjustments to a greenhouse gas emissions intensity factor for a reporting year for any local publicly owned electric utility demonstrating generation of quantities of electricity in previous years in excess of its total retail sales and wholesale sales from specified sources that do not emit any greenhouse gases...³

This provision applies only to the SFPUC's publicly-owned utility operations. As noted in the letter to Assemblymember Ting from San Francisco Mayor Ed Lee (Ting-Lee letter);

San Francisco's electric generation is large enough to allow the SFPUC to sell a significant portion of Hetch Hetchy GHG-free hydroelectricity as "unspecified power" on the California energy markets. In fact, since 1998, we have provided 3 million megawatt hours of surplus zero-GHG energy to the grid as unspecified power, a GHG-reducing contribution equivalent to taking every car in San Francisco off the road for six months. However, if AB1110 is implemented as currently written, the SFPUC would be barred from including these significant contributions to the California power grid in its emission factor calculation. Instead, the standard that would be established by AB1110 would exclude the reporting of sales of this surplus California-based GHG-free power.

.....

To address this problem, the SFPUC has offered suggested amendments that would allow San Francisco to receive credit for providing this 100 percent clean power to California's electric grid. This would be accomplished by allowing the limited carry-over of credits for excess GHG-free electric generation during those years when output is low due to below average Hetch Hetchy generation.⁴

The SFPUC appreciates the Draft Staff Proposal's approach to implementing this requirement with regard to:

³ Public Utilities Code Section 398.4(k)(2)(D)

⁴ Letter to Hon. Assembly Member Phil Ting from San Francisco Mayor Ed Lee, March 28, 2016, p.1-2

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- The methodology for calculating the quantities of surplus Zero-GHG energy available each year; and
- Establishing a carry-over period that is sufficiently long to reflect seasonal variations in zero-GHG hydroelectric generation

The SFPUC strongly disagrees with the Draft Staff Proposal's recommendation, however, that:

- The generation of credits would begin during the first year of reporting GHG emissions under PSD.⁵

This recommendation is not supported by the clear statutory language of AB1110, the legislative history of AB1110, and is inconsistent with how the CEC has routinely treated the retrospective application of legislative requirements. Each of these points is elaborated on below.

AB1110 requires that the CEC recognize excess carry-over generation that occurred prior to the first AB 1110 compliance year

AB1110 requires the CEC to

(D) Establish guidelines for adjustments to a greenhouse gas emissions intensity factor for a reporting year for any local publicly owned electric utility demonstrating generation of quantities of electricity in previous years in excess of its total retail sales and wholesale sales from specified sources that do not emit any greenhouse gases.⁶

AB1110 thus specifically requires that each "reporting year" include the "adjustments to a GHG-intensity factor" for a POU's "previous years" of surplus zero-GHG generation. As the first "reporting year" under AB1110 will be 2019⁷ it must include the surplus zero-GHG emissions that occurred prior to 2019.

The Legislature rejected a limitation on carry-over of surplus zero-GHG generation prior to the effective date of AB 1110

The Assembly Floor Analysis (August 30, 2016) was the last legislative analysis of AB1110. In analyzing the zero-GHG carry-over provisions of AB1110, the Floor Analysis noted that:

The same provision references the ability to adjust GHG emission intensity factor for one year based on "previous years." There is no

⁵ Draft Staff Proposal, p. 18

⁶ Public Utilities Code 398.4(k)(2)(D)

⁷ Public Utilities Code 398.4(k)(2)(F).

definition of what is meant by “previous years.” This is open to interpretation by the CEC.⁸

As noted above, the CEC has now defined the length of these “previous years” to match the variability in zero-GHG hydroelectric generation.

The Assembly Floor Analysis then states:

...[T]herefore the committee may want to recommend that the CEC limit the historic period available for carry-over to no earlier than the date of enactment of this bill.⁹

This recommendation to limit the scope of the accumulation of carry-over generation was specifically considered and rejected by the Legislature and was not included in AB1110.

Failing to include excess carry-over prior to the first reporting period is inconsistent with the CEC’s implementation of other carry-over requirements.

The only opposition to counting excess zero-GHG generation prior to the first reporting period is TURN¹⁰, which states that it would be “inappropriate” to allow excess carry-over to occur “since there are no PSD program GHG reporting requirements applicable to those prior years.”

Imposing a restriction on the carry-over runs counter to the CEC’s implementation of many legislative requirements such as SBX1-2 and SB350. As noted in the SFPUC’s comments on the Preliminary Scoping Questions, the CEC routinely adopts regulations that recognize generation that occurred prior to the implementing legislation. This includes the calculation of qualifying hydroelectric generation for determining RPS-eligibility¹¹, the calculation of historic carry-over of RPS generation allowed in SBX1-2, and even the regulations for the first RPS compliance period (2011-2013). In all of these cases, the CEC defined the appropriate criteria and prior year accounting periods as required under the applicable legislative requirements. There is no reason the CEC should not use the same treatment for the calculation of excess carry-over of zero-GHG generation as legislatively required.

Conclusion

⁸ Assembly Floor Analysis of AB1110 (August 30, 2016), p. 3.

⁹ Assembly Floor Analysis of AB1110 (August 30, 2016), p. 3.

¹⁰ Comments of TURN/Coalition of California Utility Employees on Preliminary Scoping Questions (March 15, 2017), p. 16.

¹¹ CEC Enforcement Procedures for the RPS for Local Publicly-Owned Utilities, Section 3204(a)(7)(C) effective August, 2013 and implementing the requirements of Public Utilities Code Section 399.30(j)

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As noted above, the AB1110 rulemaking process is still in its early phases. The SFPUC appreciates the opportunity to comment on the AB1110 proposed regulations and looks forward to working with the CEC towards their implementation.

Please do not hesitate to contact us with any questions or requests for further information.

Sincerely,

/s/ James Hendry

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