

DOCKETED

Docket Number:	16-OIR-05
Project Title:	Power Source Disclosure - AB 1110 Implementation Rulemaking
TN #:	220436
Document Title:	CalCCA Comments on Assembly Bill 1110 Implementation Draft Proposal for Power Source Disclosure
Description:	N/A
Filer:	System
Organization:	California Community Choice Association
Submitter Role:	Public
Submission Date:	7/28/2017 11:15:02 AM
Docketed Date:	7/28/2017

Comment Received From: Troy Nordquist

Submitted On: 7/28/2017

Docket Number: 16-OIR-05

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Additional submitted attachment is included below.



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July 28, 2017

California Energy Commission
Docket Unit, MS-4
Re: Docket No. 16-OIR-05
1516 Ninth Street
Sacramento, CA 95814-5512

**CalCCA Comments on Assembly Bill 1110 Implementation Draft Proposal
for Power Source Disclosure**

California Community Choice Association (“CalCCA”) hereby submits its comments on the Draft Staff Paper Assembly Bill 1110 Implementation Proposal for Power Source Disclosure (“Draft Proposal”) filed on June 27, 2017. CalCCA appreciates this opportunity to comment on the Draft Proposal and strongly urges the California Energy Commission (“CEC”) staff to modify the Draft Proposal to ensure that the new regulations do not result in inconsistent state regulations, create customer confusion, or undermine California’s ambitious clean energy policies.

I. Introduction

CalCCA represents the interests of California’s Community Choice Aggregators (“CCAs”) in the legislature and at jurisdictional regulatory agencies, including the CEC. CalCCA’s current operational members include Apple Valley Choice Energy, CleanPowerSF, Lancaster Choice Energy, MCE, Peninsula Clean Energy, Redwood Coast Energy Authority, Silicon Valley Clean Energy, and Sonoma Clean Power.

CalCCA also has several affiliate members that anticipate becoming operational members soon, including Central Coast Power, City of Corona, City of Hermosa Beach, City of San Jacinto, City of San Jose, City of Solana Beach, County of Los Angeles, County of Placer, East Bay Community Energy Authority, Monterey Bay Community Power Authority, Valley Clean Energy, and Western Riverside Council of Governments.

CalCCA’s membership demonstrates the growth of community interests in CCAs across California. Many of CalCCA’s members have developed procurement strategies to exceed the State’s Renewable Portfolio Standard (“RPS”) mandates to reflect local communities’ desire to reduce Greenhouse Gas (“GHG”) emissions. Many operational CCAs offer electricity products that exceed the current RPS standard. The ability to purchase renewable energy is a powerful tool for communities to take actions to replace fossil fuel resources, and it is important that such actions are accounted for properly so that customers are aware of the nature of electricity that is procured on their behalf.

II. Overall Comments

CalCCA appreciates the hard work of the CEC staff in undertaking the implementation of Assembly Bill (“AB”) 1110. In working with the CEC staff,

CalCCA hopes that the final Power Source Disclosure (“PSD”) regulations will accomplish the following:

- Ensure that California ratepayers understand the GHG emissions impact of their electricity products;
- Ensure that renewable energy resources receive treatment that is consistent with California’s RPS statute and regulations and electricity industry GHG emissions inventory best practices;
- Ensure that regulations adopted by the CEC do not create conflicts with other agencies’ regulations.

CalCCA is deeply concerned with the Draft Proposal because it is inconsistent with California’s clean energy policies and state programs, and the electricity industry standard practices. 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.

CalCCA urges the CEC staff to adopt the proposed modifications discussed below. CalCCA also welcomes ongoing conversations with the CEC staff to ensure the final PSD template will be compliant with the legislative intent of AB 1110, easily understood by consumers, and consistent with other state law and renewable energy industry practices.

III. Specific Comments on the Draft Proposal

A. REC Reporting for the Power Mix Should Be Modified

CalCCA urges the staff to modify the proposed REC reporting mechanism set forth in the Draft Proposal to require retail suppliers to disclose the purchase of eligible renewable energy resources based on the year the REC is retired instead of when it is generated. This modification is consistent with California’s RPS program, which requires a REC to be reported in the year it is retired and provides a three-year compliance period, or 36-month life-cycle for REC retirement.¹

Under the current Draft Proposal, a REC has to be reported in the same year that the associated power is generated.² This approach is flawed because this mechanism does not adhere to the existing reporting practice of the RPS program, where the retirement of a REC may occur after the conclusion of the year in which the electricity is generated.³ The proposed mechanism would create significant and untenable reporting complications for load-serving entities, especially for transacted portfolio contracts that deliver renewable energy volumes over multi-year periods. As Bear Valley Electric warned in its pre-rulemaking scoping comments, if staff’s Draft Proposal approach is taken, RPS reports and RPS Adjustments under the California Air Resources Board’s (“ARB”) Cap-

¹ Cal. Pub. Util. Code § 399.21(a)(7).

² Draft Proposal at 11. CalCCA notes that the Draft Proposal correctly finds that unbundled RECs should be reported in the year they are retired. Draft Proposal at 14. The reasoning behind this element of the Draft Proposal should apply to all RECs.

³ The Climate Registry Comments on Proposed Pre-Rulemaking Scoping Questions (March 15, 2017) at 3.

and-Trade program will differ from a retail supplier's PSD report, which will lead to inconsistency across agencies, customer confusion, and a lack of transparency.⁴

Most importantly, this reporting misalignment could lead to double counting of RECs. If a REC has not been properly retired, it could be subsequently sold off and used for other state RPS programs or for other retail product claims in California or elsewhere.⁵ In such a circumstance, electricity may be reported as renewable, whereas in actuality the electricity is null power, lacking the renewable and zero-GHG attributes. Such a result would violate the express provisions of the PSD statute, which requires the CEC to:

“[E]nsure 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.”⁶

As explained by the Center for Resource Solutions in their pre-rulemaking scoping comments, RECs must be retired in order for renewable energy to be reported as a “specified purchase” under the PSD statute.⁷ Under Public Utilities Code section 398.2(d), “Purchases of electricity from specified sources” or “purchases from specified sources” is defined as “electricity transactions that are traceable to specific generation sources by any auditable contract trail or equivalent, such as a tradable commodity system, that provides commercial verification that the electricity source claimed has been sold once and only once to a retail consumer.” By contrast, “Electricity from unspecified sources” is defined to mean electricity that is *not* traceable to specific generation sources by such an auditable contract trail (including the REC system).⁸ If a REC has not been retired, “it is not traceable and there is no verification that it has been sold only once.”⁹

As a result of the double-counting risk and misalignment of reporting and retirement requirements, reporting of RECs based on the year of generation would be highly misleading to consumers and regulators. Along these lines, reporting of RECs based on the date the electricity was generated could also cause load-serving entities to violate federal rules on environmental marketing claims if the REC has not been properly retired in that year.¹⁰ Such a rule would put load-serving entities in an untenable position, subject to litigation and enforcement risk.

For all of these reasons and the reasons discussed by the numerous stakeholders who filed pre-rulemaking scoping comments along these lines,¹¹ CEC staff should modify the Draft Proposal so that all types of RECs are reported in the year the REC is retired.

⁴ See Comments of Bear Valley Electric Service on the Preliminary Scoping Questions on Updates to the Power Source Disclosure Regulations (March 15, 2017).

⁵ CRS Comments on proposed Pre-Rulemaking Scoping Questions to PSD Regulations (March 15, 2017) (“CRS Scoping Comments”) at 3.

⁶ Cal. Pub. Util. Code § 398.4(k)(2)(E).

⁷ CRS Scoping Comments at 3.

⁸ Cal. Pub. Util. Code §398.2(e).

⁹ CRS Scoping Comments at 3.

¹⁰ See *Federal Trade Commission Guides for the Use of Environmental Marketing Claims*, 16 C.F.R. §260.15.

¹¹ See Pre-Rulemaking Scoping Comments of Alliance for Retail Energy Markets, Bear Valley Electric Service, CalCCA, LibertyUtilities (CalPeco Electric) LLC, San Francisco PUC, SDGE & Sempra, Sempra Services and The Climate Registry.

B. Firmed-and-Shaped Products Are Zero-Emission Resources and Should Be Treated As Such

CalCCA supports the Draft Proposal's recommendation that firm-and-shaped electricity products should be categorized in the power mix according to the resource type of the transacted RECs.¹² The contracted-for renewable energy should be reported and counted in the Power Content Label ("PCL").

To be consistent with this position, however, because fuel type and direct GHG emissions are attributes that are exclusively contained in a REC, firm-and-shaped electricity products should be assigned an emissions factor of zero. Assigning any positive emissions to firm-and-shaped products would be extremely inconsistent with California's RPS program, as well as the accounting practices in GHG Protocol Scope 2 Guidance for the accounting and reporting of GHG emissions,¹³ which is widely adopted by the electricity market in the United States as well as other countries. Without modifying the proposal, the implementation of AB 1110 will create great customer confusion, and increase costs for ratepayers due to stranded assets and RPS/AB 1110 compliance costs. Retailers and suppliers may also be exposed to greater litigation risks, which would further increase the cost of electricity. CalCCA urges the staff to revise the proposed treatment of firm-and-shaped power to avoid these unintended market consequences.

As LADWP aptly stated in its scoping comments:

The GHG emissions intensity of firm and shaped electricity products should be based on the emissions profile associated with the generation source of the REC, to reflect the fact that a MWh of renewable electricity was generated and put into the electricity grid. Electricity produced by a renewable generating facility anywhere within the electrical grid decreases the overall GHG emissions intensity of the electricity grid. Once electrons are put into the electricity grid, the electrons mix with electrons from other generating facilities and become impossible to track. The REC is used to track the renewable attributes of electricity produced by renewable generating facilities. There is one and only one REC for each MWh of renewable electricity generated. Therefore, the owner of the REC should be able to claim the GHG emission profile of the renewable generating facility regardless of where the electrons went once they entered the grid.¹⁴

First, the Draft Proposal's attempt to attribute no environmental value to RECs associated with PCC 2 products conflicts with California law. Firm-and-shaped products, or PCC 2 products, are bundled with RECs, which convey the renewable, GHG-free and environmental attributes associated with eligible renewable energy production.¹⁵ Firm-and-shaped electricity products are expressly permitted for RPS compliance purposes under the RPS statute¹⁶ because the California Legislature recognized the renewable attributes of this electricity source. Firm-and-shaped transactions are also

¹² Draft Proposal at 13.

¹³ World Resources Institute, *GHG Protocol Scope 2 Guidance: An Amendment to the GHG Protocol Corporate Standard*, available at http://www.wri.org/sites/default/files/Scope_2_Guidance_Final.pdf.

¹⁴ LADWP's Comments re AB 1110 Implementation and PSD Pre-Rulemaking Workshop (March 15, 2017).

¹⁵ Cal. Pub. Util. Code § 399.12(h); California Public Utilities Commission Decision 08-08-028 (August 21, 2008), Ordering Paragraph 1 (explaining that RECs contain all avoided GHG emissions).

¹⁶ Cal. Pub. Util. Code § 399.16(b)(2), (c).

eligible for express credits acknowledging the clean emissions profile of the RECs under the Cap and Trade Program RPS Adjustment rules.¹⁷ As PG&E explained, “[t]he RPS adjustment allows the imported electricity to adjust its emissions profile to correspond to the emissions profile associated with the generation source of the REC.”¹⁸ The Draft Proposal should be revised to conform to these other bodies of law.¹⁹

In choosing to align its proposal with some aspects of the ARB’s Cap-and-Trade program while conflicting with the express terms of the RPS statute, staff’s reliance on statements made to the press of AB 1110’s author is misplaced, as the statutory language of AB 1110 does not require or prioritize conformity of the CEC’s PSD regulations with the ARB’s regulations. Indeed, the California Supreme Court indicated, “We have frequently stated... that the statements of an individual legislator, including the author of a bill, are generally not considered in construing a statute, as the court’s task is to ascertain the intent of the Legislature as a whole in adopting a piece of legislation.”²⁰

Second, failing to recognize the environmental attributes of firmed-and-shaped electricity would greatly decrease the market value of RECs and PCC 2 Products. By counting a REC for its renewable attribute through the RPS program, but discounting the environmental attribute in the PSD, the CEC’s regulations will create friction with federal guidance and industry practices and will disrupt renewables markets in California. This approach would de-value PCC 2 products already contracted for, which would be grossly unfair to retail suppliers and would create stranded costs for ratepayers, as discussed below. As SMUD expressed in scoping comments:

Utilities enter into firmed and shaped contracts in order to procure zero-emission, renewable power for their customers. Utility customers should enjoy the environmental benefits of the procurement their dollars support for firmed and shaped contracts, just like any other renewable procurement.²¹

Moreover, by de-valuing firmed-and-shaped products, the Draft Proposal could have the effect of discriminating against out-of-state renewable energy resources, which is prohibited under the RPS statute.²²

Third, significant future costs to ratepayers will be incurred under the Draft Proposal. A retailer would be limited to procuring PCC 1 products to preserve low GHG emission profiles, even though California’s RPS program allows retailers the flexibility to procure firmed-and-shaped products as well. By assigning GHG emissions to PCC 2 products and essentially deeming PCC 2 products as non-renewable resources, the implementation of AB 1110 would increase costs to comply with RPS requirements, as well as the cost of building new resources moving forward. The staff’s proposal will also undermine the ongoing effort to improve the California Independent System Operator’s (“CAISO”) Energy Imbalance Market (“EIM”), and lead to stranded assets of regional transmission infrastructure. The EIM has been created to help retailers, as well as ratepayers, realize economic

¹⁷ 17 CFR § 95852(b)(4).

¹⁸ Pacific Gas and Electric Comments on Feb. 21 Staff Pre-Rulemaking Workshop on Updates to the PSD Regulations (March 15, 2017) at 4.

¹⁹ See Draft Proposal at 4; cf *People v. Rodriguez*, 55 Cal. 4th 1125, 1146 n.4 (2012) (discounting the relevance of the statements of an individual legislator in statutory interpretation).

²⁰ *Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062, 48 Cal.Rptr.2d 1, 906 P.2d 1057.

²¹ William Westerfield III Comments: SMUD Comments on Staff Workshop - AB 1110 Implementation Rulemaking (March 15, 2017) (“SMUD Pre-Rulemaking Scoping Comments”) at 4.

²² See Cal. Pub. Util. Code § 399.11(e)(2).

savings that are made possible through regionally traded electricity. The CEC staff proposal would create a disincentive to utilize PCC 2 resources, which is at odds with efficiencies and savings gained through the EIM. Furthermore, a great deal has been invested in transmission infrastructure to allow for imports and exports to facilitate achieving climate goals. If PCC 2 products are no longer valuable because the environmental attributes in their associated RECs are not counted, these transmission assets would be underutilized, and may lead to stranded costs for ratepayers to bear.

CalCCA urges the staff to treat firmed-and-shaped products in a manner that is consistent with its approach to the power mix disclosures, the state's RPS program, the ARB's RPS Adjustment Rules and the electricity industry's GHG emissions accounting practices. Firmed-and-shaped products should not be assigned any emissions values, as the RECs associated with those powers contain both the renewable energy and environmental attributes.

C. The Generation Resource Type Associated with Unbundled RECs Should Be Reported in the Power Mix

CalCCA supports the staff's Draft Proposal to reflect the percentage of retail sales associated with unbundled RECs on the PCL as a footnote.²³ However, CalCCA does not agree with the staff's proposal to exclude unbundled RECs from the eligible renewables category of the power mix, and urges the staff to adjust the proposal to reflect unbundled RECs in the power mix.

Unbundled RECs, like all other RECs, contain the renewable and environmental attributes,²⁴ and should be assigned the same validity as other RECs. The PSD regulations should recognize that unbundled RECs provide proof of renewable electricity generation from an eligible renewable resource under the RPS,²⁵ as well as the associated environmental attributes resulting from the use of renewable generation.

AB 1110 requires the disclosure of the portion of annual sales derived from unbundled RECs, but it does not provide that unbundled RECs be excluded from the PCL.²⁶ Excluding unbundled RECs from the eligible renewables category in the PCL portrays an inaccurate emissions profile of purchased electricity by a retailer, which would result in inconsistency with the RPS statute as well as customer confusion. A statutory purpose of AB 1110 was to ensure that the PCL disclosures are "accurate, reliable and simple to understand."²⁷ To fulfill this legislative purpose, Customers should see the renewable attributes of RECs purchased on their behalf in the PCL. Furthermore, as greenhouse gases are regional in nature, the growth of renewable energy in other parts of the Western grid will lead to the reduction of GHG emissions regionally. By discounting unbundled RECs, the CEC essentially discourages the opportunity for the Western region to work together to reduce GHG emissions. For these reasons, the generation source type associated with unbundled RECs should be reported in the power mix to recognize the renewable and environmental attributes of these RECs.

D. Asset Controlling Supplier ("ACS") Products Should Be Associated with Fuel Types within the PCL, Rather Than Being Listed as Unspecified

²³ Draft Proposal at 14; *see also* SMUD Pre-Rulemaking Scoping Comments at 5.

²⁴ § 399.12(h).

²⁵ § 399.16(b)(3), (c).

²⁶ Cal. Pub. Util. Code § 398.4(h)(7).

²⁷ § 398.1(b).

Staff's Draft Proposal would assign ACS-specific GHG emissions factors to ACS resources as determined under the ARB's Mandatory Reporting Regulation ("MRR"), yet, for the power mix, purchases from ACSs would continue to be categorized as unspecified power.²⁸ CalCCA asserts that if the ARB is able to assign ACS-specific emissions factors based on data submitted by the suppliers, ACS products should be prorated and associated with specified fuel types under the PCL.

Under the MRR, once an ACS is approved and an emissions factor assigned by ARB, "ACS power procured from an ACS's system is considered specified source power."²⁹ CalCCA recommends that, rather than continue to report ACS purchases as unspecified power, the Commission should adopt ARB's treatment of ACSs under MMR as specified power. As Staff noted at the July 14, 2017 Pre-Rulemaking Workshop, this would mean that a purchase from an ACS would be broken into subcategories of resources (e.g., hydro and other sources), rather than simply listed as unspecified power.³⁰ If the ARB can provide the ratio of hydroelectric or other sources of power embedded within the emissions factor, then LSE can calculate the emissions and tie them to specific fuel types based on the ratio. The goal of doing this is to maximize the use of available data to provide consumers with higher accuracy emissions intensity information. This treatment of ACS would promote the stated purpose of AB 1110 to ensure that entities offering electric service "disclose accurate, reliable, and simple to understand information on the sources of energy, and the associated emissions of greenhouse gases, that are used to provide electric service."³¹

E. Transmission Losses Should Not Be Assigned GHG Emissions Factor

The Draft Proposal would assign a "transmission loss correction factor" of 1.02 to electricity imported into a California balancing authority, where the retail supplier has not demonstrated that transmission losses are otherwise accounted for.³² Under Staff's current proposal, this factor would be used to calculate the power mix and GHG emissions intensity factor of the retail supplier's electricity portfolio.

This proposal would greatly contribute to customer confusion and deviate from data use in existing retail-level reporting programs, which utilize retail sales and not loss-adjusted volumes. CalCCA urges Staff to modify the proposal to eliminate the transmission loss correction factor to remain consistent with existing retail reporting protocols.

While transmission losses are a natural occurrence of electricity delivery, they are not an element of electric service well understood by consumers, nor are they necessary to provide customers an accurate picture of the resource types and GHG emissions characteristics of the electricity they consume. The concept of transmission losses will likely be confusing to customers, thereby frustrating the intent of AB 1110 that the information provided to customers be "simple to understand."³³ CalCCA therefore asserts that the proposed transmission line loss correction factor should not be introduced in the PCL or GHG emissions intensity calculations.

²⁸ Draft Proposal at 16.

²⁹ California Air Resources Board, ARB Specified Source Electrical Imports Greenhouse Gas Reporting, Frequently Asked Questions (May 23, 2014) at 5, available at https://www.arb.ca.gov/cc/reporting/ghg-rep/ghg-rep-power/specified_source_acs_faqs.pdf.

³⁰ Draft Proposal at 16; Transcript of the 07/14/2017 Workshop Updated to the Power Source Disclosure Regulations at 18:18-25 – 19:1-3.

³¹ Cal. Pub. Util. Code § 398.1(b).

³² Draft Proposal at 14-15.

³³ Cal. Pub. Util. Code § 398.1(b).

IV. Conclusion

CalCCA respectfully requests that the CEC modify its AB 1110 implementation Draft Proposal to reflect these changes:

- CEC staff should modify the Draft Proposal so that all types of RECs are reported in the year the REC is be retired.
- Firmed-and-shaped products should not be assigned any emissions values, as the RECs associated with those powers contain both the renewable energy and environmental attributes.
- The generation source type associated with unbundled RECs should be reported in the power mix to recognize the renewable and environmental attributes of these RECs.
- ACS should be treated as specified power, reported based on fuel type, and the associated emissions should be prorated based on fuel type.
- The proposed transmission line loss correction factor should not be introduced in the PCL or GHG emissions intensity calculations.

CalCCA believes that these requests are reasonable, consistent with existing California law and the statutory purpose of AB 1110, and will clearly educate consumers about their electricity product without disrupting the electricity market.