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**Comments on Staff Paper: Assembly Bill 1110 Implementation Proposal
for Power Source Disclosure, Third Version**

Additional submitted attachment is included below.



via electronic commenting system:

<https://efiling.energy.ca.gov/Ecomment/Ecomment.aspx?docketnumber=16-OIR-05>

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

To whom it may concern:

Re: Comments on Staff Paper: Assembly Bill 1110 Implementation Proposal for Power Source Disclosure, Third Version

The Center for Biological Diversity (“the Center”) appreciates the opportunity to submit the following comments on the Staff Paper: Assembly Bill 1110 Implementation Proposal for Power Source Disclosure, Third Version (“Staff Paper”) docketed in the above-referenced proceeding on October 9, 2018.

The Center is a non-profit environmental organization with over 1 million members and online activists, and offices throughout the United States, including in San Francisco and Los Angeles. The Center uses science, policy and law to advocate for the conservation and recovery of species on the brink of extinction and the habitats they need to survive.

As the Staff Paper acknowledges, AB 1110 requires accurate, reliable and easily understandable disclosure of “all” greenhouse gas emissions “associated” with electricity generation through the Power Source Disclosure (“PSD”) program. In its Draft Staff Paper: Assembly Bill 1110 Implementation Proposal for Power Source Disclosure docketed on June 27, 2017, the Commission proposed to exclude CO₂ emissions from biogenic electricity generation when calculating the greenhouse gas emissions intensity. The Draft Paper takes the same approach—the emissions intensity factor does not include CO₂ emissions from biogenic sources (but will include CH₄ and N₂O emissions from biogenic sources). The Commission now proposes, however, to separately provide the greenhouse gas emissions intensity including CO₂ emissions from biogenic sources, in a footnote on consumers’ power content label.¹

The Commission’s new approach correctly acknowledges that electricity generated from biogenic sources results in CO₂ emissions, and makes an effort to disclose such emissions to consumers. In this respect, the Commission’s latest approach is an improvement on the Commission’s previous proposal, which completely failed to account for CO₂ emissions from biogenic sources. However, in order to comply with AB 1110 the Commission must include biogenic sources in the greenhouse gas emissions intensity, and present as a footnote, if it

¹ Staff Paper at 25, 41.

chooses to include it at all, the greenhouse gas emissions intensity excluding biogenic sources. The Commission's justification for excluding biogenic sources from the greenhouse gas intensity are unavailing. Its proposal remains arbitrary and unlawful.

I. The Staff Paper's Proposal for Calculation of the Greenhouse Gas Emissions Intensity is Counter to the Plain Text and Purpose of AB 1110

AB 1110 is clear that the greenhouse gas emissions intensity must be calculated by reference to "the sum of *all* greenhouse gas emissions associated with a generation source" (emphasis added).² Because it does not include CO₂ emissions from biogenic generation sources, the Commission's method of calculating the greenhouse gas intensity does not comply with the plain language of the intensity calculation method set out in AB 1110.

Further, failing to include greenhouse gas emissions from biogenic sources when calculating the greenhouse gas intensity is inconsistent with the Legislature's purpose in passing AB 1110. The Legislature passed the bill because of the need for "reliable, accurate, timely, and consistent information regarding fuel sources for electric generation."³ The purpose of disclosing the greenhouse gas emissions intensity to provide "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 services."⁴ Providing a greenhouse gas emissions intensity that excludes biogenic sources is neither reliable, nor accurate. To the contrary, it is simply misleading to present a greenhouse gas emissions intensity that does not include emissions that the Commission acknowledges are generated by biogenic sources.

To include the true greenhouse gas emissions intensity (i.e., the emissions intensity including emissions from biogenic sources) in a footnote does not render what the Commission proposes to use as the greenhouse gas emissions intensity (i.e., the emissions intensity minus emissions from biogenic sources) compliant with AB 1110. To the contrary, putting the emissions intensity calculated by reference to all emissions in a footnote and presenting to consumers an intensity that arbitrarily excludes certain CO₂ emissions makes the disclosure more difficult for consumers to understand—the exact opposite of the Legislature's intent in requiring disclosure of the emissions intensity.

II. The Commission's Failure to Include Biogenic CO₂ Emissions in the Greenhouse Gas Emissions Intensity is Inconsistent with Other California and U.S. Inventories

As the Staff Paper notes, reliance on data from the Mandatory Reporting Regulation (MRR) program meets the Power Source Disclosure (PSD) program's requirement for accurate and reliable information, because the MRR program is "the most reliable and verified GHG

² Pub. Util. Code § 398.2(a).

³ Id at § 398.1(a).

⁴ Id. at § 398.1(b).

emissions data collection” in California.⁵ The Commission proposes, therefore, to utilize the methods employed by the MRR and Emissions Inventory programs as a basis for the PSD program.⁶ The staff paper acknowledges that biogenic emissions must be reported under, and are included in the data generated by, the MRR program.⁷ Yet the Commission proposes to exclude CO₂ emissions from biogenic sources in its calculation of the emissions intensity. This proposal is inconsistent with the approaches taken in the MRR program and the state and federal inventories, and thereby undermines AB 1110’s goal of providing consistent, reliable information to consumers.

Further, the Staff Paper’s approach to biogenic CO₂ is also inconsistent with its treatment of other emissions. For example, the Staff Paper proposes to include CH₄ and N₂O emissions associated with biogenic sources, while excluding CO₂ emissions from those same sources.⁸ It offers no justification for including some, but not all, biogenic emissions. The Staff Paper also proposes to require reporting and disclosure of fugitive emissions from geothermal energy production which, like biomass emissions, are reported under MRR but which, like biogenic CO₂ emissions, do not give rise to compliance obligations under the cap and trade program.⁹ The Staff Paper also proposes that the emissions intensity of firmed-and-shaped products be calculated using the actual emissions profile of substitute generation rather than attributes of the generation that produced renewable energy credits (RECs); the paper deems this treatment necessary in order to maintain consistency with the MRR program, “bring additional transparency regarding the GHG emissions intensity associated with electricity portfolios,” and provide “a more accurate accounting” to consumers.¹⁰ The Staff Paper proposes similar treatment for unbundled RECs.¹¹ Yet it deviates from the MRR program with respect to its proposed treatment of biogenic CO₂ emissions. The consistency with which the Staff Paper applies these principles in other contexts highlights the arbitrary nature of its approach to biogenic CO₂, and its failure to comply with the Legislature’s direction to provide consistent, reliable information to consumers.

III. The Commission’s Approach is Not Justified by the IPCC Greenhouse Gas Inventory Accounting or California’s Cap-and-Trade Program

The Commission attempts to justify its sharp deviation from the “methods” used in the MRR program on the basis that CARB’s Greenhouse Gas Emissions Inventory discloses CO₂ emissions from biogenic electricity generation separately to other GHG emissions, and that this approach is consistent with IPCC greenhouse gas inventory accounting, and California cap-and-trade program. But this is no justification. The California inventory reports biogenic CO₂ emissions from electricity generation,¹² and the fact that emissions from biogenic electricity

⁵ Staff Paper at 11-12, 13.

⁶ Id. at 24.

⁷ Ibid.

⁸ Id. at 25.

⁹ Ibid.

¹⁰ Id. at 32.

¹¹ Id. at 7.

¹² California Greenhouse Gas Inventory for 2000-2015 — by IPCC Category at 6 (updated June 6, 2017) (“California Inventory”), available at https://www.arb.ca.gov/cc/inventory/data/tables/ghg_inventory_ipcc_sum_2000-15.pdf (visited October 18, 2018).

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generation is grouped with all other biogenic emissions, rather than being grouped with all other electricity generation emissions, does not justify simply excluding such emissions. Biogenic CO₂ emissions are not “excluded emissions” for the purposes of the inventory.¹³ The inventory makes clear that the purpose of including emissions estimates for sources other than “included emissions” is for informational purposes.¹⁴ Where, as here, emissions are being disclosed for informational purposes, biogenic emissions should therefore be included.

There is no justification to exclude biogenic greenhouse gas emissions from the emissions intensity calculation on the basis that such emissions do not give rise to compliance obligations under the cap and trade program. The extent of cap and trade coverage, and the exclusion of certain categories of emissions from the program are policy choices, made within the context of California’s overall effort to meet greenhouse gas reduction targets. The fact that a policy decision has been made not to impose compliance obligations on certain emissions does not mean that those emissions do not exist. The California inventory clearly includes emissions data for CO₂ emissions from biogenic electricity generation.¹⁵ Excluding such emissions from the emissions intensity calculation is inconsistent with the Legislature’s direction that the Commission rely on “the most recent verified greenhouse gas emissions data” when calculation the emissions intensity.¹⁶

The Commission’s approach to aligning CO₂ emissions from biogenic sources and the cap and trade program is also inconsistent with its approach alignment with the cap and trade program in other aspects of its proposal. The Commission has declined to apply cap-and-trade RPS adjustment to firmed and shaped products because the PSD program is not a “compliance program that imposes direct financial costs on GHG emissions.”¹⁷ By the same reasoning, biogenic emissions should not be excluded from the emissions intensity calculation. The Commission’s inconsistent approach to aligning the emissions intensity calculation with the cap and trade program is inconsistent with AB 1110’s dictate that the PSD program provide consumers with accurate, reliable and consistent information.

Nor is the Commission’s approach consistent with the IPCC guidance. To the contrary, the IPCC’s guidance leads to the conclusion that biogenic CO₂ emissions should be included in the emissions intensity disclosed under the PSD program. As the Staff Paper notes, the reason for assigning biogenic CO₂ to the Agriculture, Forestry and Other Land-Use sector in the IPCC guidelines is to avoid double accounting.¹⁸ Carbon dioxide emissions from biomass combustion

¹³ California Air Resources Board, Scoping Plan Categorization (updated June 6, 2017), *available at* https://www.arb.ca.gov/cc/inventory/data/tables/ghg_inventory_by_scopingplan_00-15.xlsx (visited October 18, 2018).

¹⁴ *Ibid.*

¹⁵ California Inventory.

¹⁶ Pub. Util. Code § 382.4(k)(2)(C).

¹⁷ Transcript of the 07/14/2017 Workshop Updated to the Power Source Disclosure Regulations (TN#220318) at 13:20-14:6.

¹⁸ Intergovernmental Panel on Climate Change, Task Force on National Greenhouse Gas Inventories, Frequently Asked Questions, Q2-10, at <http://www.ipccnggip.iges.or.jp/faq/faq.html> (visited October 18, 2018).

used for energy *are* recorded as a memo item in the energy sector of the IPCC guidelines.¹⁹ But including CO₂ emissions from biogenic sources in the PSD program poses no risk of double-counting, as the PSD program is not concerned with emissions from other economic sectors. Therefore, the IPCC’s justification for otherwise separating biogenic CO₂ emissions from other power sector emissions is irrelevant here. The IPCC itself has made clear that its accounting convention of reporting biogenic emissions in the Agriculture, Forestry, and Other Land Use sector rather than the Energy sector—should not be interpreted as suggesting that biomass is somehow “carbon neutral” or that biomass CO₂ emissions have no effect on the climate.²⁰ Yet in excluding biogenic emissions from the emissions intensity, the Commission proposes to effectively treat these sources as such.

Even if there were some inconsistency between AB 1110’s approach and conventions used in preparing inventories, the specific terms of AB 1110 must control here; by specifically requiring that the “sum of all” greenhouse gas emissions “associated” with a generation source be included in the emission’s intensity calculation, the statute itself mandates disclosure of CO₂ emissions associated with biogenic electricity generation, even if IPCC guidance or inventory conventions suggested otherwise (which, as shown above, they do not).

IV. The Commission May Disclose Emissions Intensity Excluding Biogenic Sources as a Footnote to the Power Content Label

To the extent that the Commission considers it useful or informative to provide an emissions factor that excludes biogenic emissions,²¹ it could choose to set out the emissions intensity factor excluding biogenic CO₂ in a footnote in the Power Content Label, along with an explanation stating that biogenic CO₂ emissions are accounted separately from fossil emissions in the energy section of state and federal greenhouse gas inventories, and that such emissions do not give rise a compliance obligation under the cap and trade program. Nothing in AB 1110 prohibits the disclosure of such additional information to consumers. This approach would further the statute’s goal of informing consumers. It would make clear to consumers that biogenic electricity sources are a source of greenhouse gas emissions. A consumer might even subtract the greenhouse gas emissions intensity factor excluding biogenic sources from the emissions intensity factor including biogenic sources, and thereby determine how many kg CO₂e/ MWh are generated from biogenic sources. However, for the reasons set out above, the Commission must not relegate the true greenhouse gas emissions intensity—the emissions intensity that includes, as AB 1110 requires, *all* emissions associated with a generating sources—to a footnote. Rather, the greenhouse gas emissions intensity must include biogenic CO₂.

Effectively, to comply with the purpose and express language of AB 1110 the Commission must change out the current name and position on the page of the two calculated

¹⁹ Ibid.

²⁰ Ibid.

²¹ The Center and Sierra Club consider it informative to provide in a footnote an emissions intensity factor that excludes biogenic sources, because such footnote allows consumers to determine the emissions from biogenic sources alone.

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emissions intensities. The emissions intensity including biogenic CO₂ must be the factor used as the greenhouse gas emissions intensity required by AB 1110, and the factor excluding biogenic CO₂ may be footnoted, if the Commission so chooses.

Please feel free to contact me should you have any questions.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Clare', with a stylized flourish at the end.

Clare Lakewood
Senior Attorney, Climate Law Institute
Center for Biological Diversity