DOCKETED	
Docket Number:	16-OIR-05
Project Title:	Power Source Disclosure - AB 1110 Implementation Rulemaking
TN #:	225101
Document Title:	California Municipal Utilities Association Comments on Revised Assembly Bill 1110 Implementation Proposal for Pow
Description:	N/A
Filer:	System
Organization:	California Municipal Utilities Association
Submitter Role:	Public
Submission Date:	10/25/2018 4:59:26 PM
Docketed Date:	10/25/2018

Comment Received From: California Municipal Utilities Association
Submitted On: 10/25/2018
Docket Number: 16-OIR-05

CMUA Comments on Revised Assembly Bill 1110 Implementation Proposal for Power Source Disclosure, Third Version

Additional submitted attachment is included below.

STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:	Docket No. 16-OIR-05
AB 1110 Implementation Rulemaking	

COMMENTS OF THE
CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION
ON REVISED ASSEMBLY BILL 1110 IMPLEMENTATION PROPOSAL
FOR POWER SOURCE DISCLOSURE, THIRD VERSION

The California Municipal Utilities Association ("CMUA") appreciates the opportunity to provide comments to the California Energy Commission ("Commission") on *Revised Assembly Bill 1110 Implementation Proposal for Power Source Disclosure, Third Version* ("Revised Staff Proposal"), issued on October 9, 2018.

I. INTRODUCTION

The Power Content Label ("PCL") depicted in Figure 1 of the Revised Staff Proposal does nothing to advance the consumer's understanding of the sources of electricity their utility uses to provide electric service and creates needless confusion. As directed by Public Utilities Code section 398.1(b), the overarching goal of the Power Source Disclosure regulations is 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" to retail electric customers in California.[1] In order to ensure that customers receive valuable and simple to understand information, the Commission must consider the role of the PCL in the context of

[1] Cal. Pub. Util. Code § 398.1(b).

information that customers receive regarding similarly aligned programs, such as the Cap and Trade program (administered by the California Air Resources Board ("CARB")) and renewables portfolio standard ("RPS"). To the extent that these disparate programs rely on different sources of data, different definitions, different assumptions, and different counting rules, it becomes impossible for a customer to assign any relative value to this information individually or collectively. The more these programs diverge, the greater opportunity for confusion.

As described below, CMUA urges the Commission to make further revisions to the proposed regulations that will (1) better align the greenhouse gas ("GHG") emissions intensity reporting with existing state programs, (2) not devalue existing investments that utilities have made in good faith, and (3) provide customers with a simpler PCL.

II. COMMENTS ON THE REVISED STAFF PROPOSAL

A. Grandfathering for Firmed and Shaped Investment

1. Eliminate the Sunset Date for the Grandfathering Provision

The proposal to limit the ability of existing firmed and shaped imports to be classified according to the emissions profile of the renewable generator and associated RECs should be revised or rejected. The Revised Staff Proposal acknowledges that the proposed treatment of firmed-and-shaped transactions could significantly devalue existing investments in renewable resources. The Revised Staff Proposal states:

> Staff recognizes that some retail suppliers have made investments in firmed-and-shaped products as a cost-effective and allowable way to meet RPS targets or to support voluntary renewable procurement.[2]

Staff is correct that some retail sellers have made substantial investments in both long-term contracts and ownership of out-of-state renewable generators that rely on firming and

[2] Revised Staff Proposal at 35.

shaping agreements to economically deliver power to California. These retail sellers include several POUs, and these arrangements are fully eligible to count toward the RPS and (through the RPS Adjustment) carry no Cap and Trade compliance obligation.

For example, the Turlock Irrigation District ("TID") made a considerable investment and built the 136 MW Tuolumne Wind Project in 2009. Many of the best wind sites inside of California had already been developed, so TID built its project along the Columbia River Gorge, one of the best sustained wind areas within the WECC. For a utility of TID's size, this was a major investment and the project was justified because it was needed to meet California's environmental goals, including the RPS and Cap and Trade requirements. This project was fully compliant with the voluntary RPS requirements for POUs that applied at that time and was eligible as a grandfathered resource under SB2-1X (stats. 2011). In combination with TID's diverse portfolio of resources, the project has helped ensure that TID's RPS requirements are satisfied through 2024.

Similarly, the Modesto Irrigation District ("MID") also invested heavily in Pacific Northwest wind facilities, executing long-term contracts with associated firming and shaping agreements. These contracts were vital to MID's RPS strategy and make up a majority of its RPS resources. Again, these investments were and still are fully eligible under the RPS.

In explaining this proposed change in policy, the Revised Staff Proposal states:

> Staff proposes a grandfathering provision that would apply to the accounting methodology under PSD to **provide sufficient transition time for retail suppliers to renegotiate or replace existing firmed-and-shaped agreements at their discretion**. Under the proposed revision, firmed-and-shaped imports under contract as of February 1, 2018, may be classified according to the emissions profile of the renewable generator and associated RECs. Staff proposes using February 1, 2018, as the cutoff date since that corresponds with the public workshop in support of previous iteration of this implementation proposal, in which staff reaffirmed its conclusions regarding firmed-and-shaped imports.[3]

[3] Revised Staff Proposal at 36 (emphasis added).

While CMUA appreciates Staff's effort to propose a compromise position, the actual proposal does not accomplish Staff's intent. As shown in the examples of TID and MID, many of these resources are owned or under long-term contracts that do not expire until well after 2025. It may be impossible or extremely costly to renegotiate or otherwise terminate one of these contracts early. Taking such a drastic action could expose a POU's customers to significant costs.

Instead, CMUA urges the Commission to address these long-term investments and provide a true grandfathering provision that protects retail sellers for the entirety of the original term of the applicable contract or ownership agreement. The Commission should eliminate the arbitrary and artificial sunset date of December 31, 2024, and instead amend the proposed language to genuinely honor the terms of the initial agreements executed in good faith by retail sellers. The grandfathering provision should continue for the entire term of initial contract or ownership agreement with the out-of-state renewable facility. If a long-term contract includes an option to purchase the facility, then the retail seller should be allowed to exercise this option without losing the eligibility of the grandfathering provision.

2. Delete or Provide Support for Allegations of Widespread Violations of WREGIS and Breach of Contract.

The Revised Staff Proposal includes a concerning assertion relating to firmed and shaped transactions:

> [U]sing RECs to offset emissions from substitute electricity could leave emissions unaccounted for somewhere in the Western Interconnection, since most other jurisdictions lack reciprocal retail-level emissions accounting regimes to ensure uniform treatment of firmed-and-shaped imports and null power.

While other states may not have equivalent Cap and Trade programs or Mandatory Reporting Regulations ("MRR"), that does not mean that some other out-of-state entity could treat null

power as zero GHG. This would be prohibited by both the WREGIS Operating Rules and by the express terms of a firming and shaping contract.

First, the WREGIS Operating Rules define Renewable and Environmental Attributes to include "[a]ny and all credits, benefits, emissions reductions, offsets, and allowances – howsoever titled – attributable to the generation from the Generating Unit, and its avoided emission of pollutants."[4] Further, the WREIGS Operating Rules state:

> A WREGIS Certificate (also called a Renewable Energy Credit (REC)) represents **all Renewable and Environmental Attributes of MWh of electricity generation from a renewable energy Generating Unit registered with WREGIS** or a Certificate imported from a Compatible Tracking System and converted to a WREGIS Certificate.[5]

When a POU purchases a firmed and shaped product, the RECs associated with the relevant MWh are deposited in the purchasing POU's WREGIS account and POU retires those RECs. If another entity were to claim that null power associated with those RECs that carried the GHG emission profile of the renewable resource, that entity would be in express violation of WREGIS.

Second, nearly all renewable contracts, including firmed and shaped contracts executed by POUs, use the same definition for environmental attributes or green attributes as was originally adopted by the California Public Utilities Commission ("CPUC"). Pursuant to the CPUC-adopted definition, green attributes:

> means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its displacement of conventional Energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate

[4] WREGIS Operating Rules at 5.
[5] *Id.* at 3.

> Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights.[6]

If a seller sold the green attributes to a California POU pursuant to a firmed and shaped contract and then sold the null power to a third party as "zero emission" power, that seller would likely be in breach of its contract. Such an action would likely have serious financial consequences under the terms of the contract for the seller.

The Revised Staff Proposal seems to imply that firmed and shaped contracts cannot be treated as having zero emissions because there will be widespread and intentional violation of both the WREGIS Accounting System and breach of contract. These are serious allegations that, if true, would undermine the integrity of the RPS program that is reliant on both WREGIS and the validity of contracts. If the Revised Staff Proposal is going to continue to include such a statement, it should be either clarified, revised to make a narrower point, or backed up with actual examples where such violations have been discovered.

B. Null Power, Overcounting, and Double Counting

1. The Null Power Proposal Needs to Be Revised to Prevent Over-Counting GHG Emissions

The Revised Staff Proposal would require that null power be assigned the emissions factor of an unspecified power claim. While this is generally a reasonable approach, in some cases this can create internal inconsistencies within the Revised Staff Proposal. Staff clarifies that a "REC is not an emissions reduction credit and cannot be used for that purpose."[7] But in cases where there is not a zero-GHG attribute associated with the REC and there is no zero-GHG attribute associated with the null power, then two parties would have GHG attributed for the

[6] CPUC Decision 08-04-009 at A-4.
[7] Revised Staff Proposal at 18.

same underlying energy. This inconsistency could lead to over counting or double counting emissions.

To demonstrate, consider as an example Solar Facility, which sells one Unbundled REC to Utility A and sells the null power (stripped of the REC) to Utility B. That one MWh of solar electricity is obviously zero emission power and should be treated as such. However, Utility A does not get to count that REC towards its GHG emissions intensity reporting, and Utility B must treat that 1 MWh of null power as having an unspecified emission factor. The Revised Staff Proposal has essentially converted 1 MWh of solar power into unspecified power without any zero GHG benefit flowing to anyone. This structure fundamentally overcounts GHGs in California.

The basic principle in WREGIS, in voluntary REC programs, as well as in every other RPS program in the country, is that renewable generation is tracked by RECs, retired in a tracking system to ensure only one use, and that the REC conveys to the holder or procurer of the REC the clear ability to claim the nature of the power they have procured. The Commission must revise its overall proposal to avoid this overcounting so that at least one entity is getting a zero GHG MWh for every MWh of zero-GHG power that is created.

2. Delete Double Counting Example

The Revised Staff Proposal includes in its discussion of null power, the following example:

> For example, a renewable generator in another state could sell the RECs associated with certain generation to an entity in its home state for a product claim under that State's RPS and sell the underlying electricity to a California retail supplier for a product claim under Power Source Disclosure.

As with the discussion above, this is a serious allegation that would be in direct violation of the WREGIS Accounting System and the renewable contracts entered into by California utilities.

Further, if a California utility were to knowingly claim that out-of-state generation, where the RECs had been retired in WREGIS for another state's RPS program, were to qualify as zero-GHG electricity, then that California utility would be in violation of a host of statutes and regulatory requirements that could carry severe penalties.

Again, if this example were possible, it would cast serious doubt on the legitimacy of California's RPS program and the WREGIS system. Such serious allegations should not be made lightly and should not remain in a Commission-sponsored document unless they are substantiated. Absent such substantiation, this example should be deleted.

C. Energy Imbalance Market

1. The Proposed Treatment of EIM Transactions is Inconsistent with CARB's MRR.

The Revised Staff Proposal proposes that "unspecified electricity, including any electricity that may be transacted through the EIM, be assigned CARB's default emissions factor of 0.428 MT CO2e."[8] Based on this description, it appears that the Revised Staff Proposal is confusing the issue of "secondary dispatch" and "outstanding emissions" with actual EIM deliveries (referred to in the MRR as "Deemed Deliveries").

The current MRR calls for all scheduling coordinators to "calculate, report, and cause to be verified emissions associated with electricity imported as deemed delivered to CA by the EIM optimization model." The current proposed regulatory amendments to the MRR, further clarifies:

> (C) Deemed Delivered EIM Emissions *Reported by EIM Participating Resource Scheduling Coordinators.* Annually, based on the results of each 5-minute interval, each EIM Participating Resource Scheduling Coordinator must calculate, report, and cause to be verified, emissions associated with electricity imported as deemed delivered to California by the EIM optimization model. *For data year 2019, EIM Participating Resource Scheduling Coordinators must report emissions associated with electricity*

[8] Revised Staff Proposal at 34.

imported as deemed delivered to California based on the results of each 5-minute interval for the time period of January 1, 2019 to March 31, 2019.[9]

and

(h)(2)(C) *Deemed Delivered EIM Emissions as Calculated by CARB*. Deemed Delivered EIM Emissions is the sum of the following information reported by EIM Participating Resource Scheduling Coordinators:

EIM Participating Resource Scheduling Coordinator Reporting Requirements. For every 5-minute interval, each EIM Participating Resource Scheduling Coordinator must calculate, report, and cause to be verified, emissions and MWs associated with electricity imported as deemed delivered to California by the EIM optimization model.

The issue of a default emissions factor is only applied to ***outstanding*** EIM emissions that CARB attributes to the secondary dispatch.[10]

Therefore, to ensure consistency with the existing MRR and pending regulatory amendments, the Commission should follow the existing MRR requirements that EIM participants report the emissions from their "deemed delivered" EIM energy according to the data provided by CAISO, with the GHG intensity for that energy, which is also data CAISO will provide to each EIM participating utility. It would be inappropriate for the PCL to report on the "outstanding EIM emissions" as these cannot be attributed to any one utility, or to electricity that is actually delivered to serve load in California. While it may be appropriate for CARB to somehow capture the *potential* emissions increase outside of the state related to the EIM, accounting for those uncertain emissions on a PCL would be contrary to the statutory purpose of the label.

[9] Proposed Amendments to the Regulation for The Mandatory Reporting of Greenhouse Gas Emissions, section 95111(h)(1)(C) (https://www.arb.ca.gov/regact/2018/ghg2018/proregorder.pdf)
[10] (see revised MRR section 95111(h)(1)-(2).

D. Proposed Power Content Label

As stated above, the purpose of the PCL is 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" to retail electric customers.[11] In considering the design and content of the PCL, the Commission should ask whether a generally well-informed and engaged customer (both from a residential and commercial customer perspective) could reasonably be expected to understand the data presented and make accurate and meaningful assessments. As currently proposed, CMUA has serious concerns that customers would be confused by the new footnotes.

1. Delete Footnote 2.

Staff's apparent intent with Footnote 2 is to inform customers that their utility is using the firmed and shaped grandfathering provision and that under the otherwise applicable rules, the retail supplier's GHG emissions intensity would be higher. While this is not an unreasonable goal, this is a truly confusing topic that is likely only understood by actual industry and regulatory experts. CMUA believes it is unlikely that even the most sophisticated customers would be able to understand the meaning of this footnote without substantial additional research. For example, would a customer understand what is meant by "nonrenewable electricity delivered under renewable contracts," or would a customer be able to understand the relative importance of a higher or lower percentage?

While CMUA strongly supports a transparent and accurate PCL, this issue is extremely complex, and as currently proposed would only serve to create more confusion. CMUA recommends that the Commission simply delete this footnote.

[11] Cal. Pub. Util. Code § 398.1(b).

2. Delete Footnote 1.

The Revised Staff Proposal proposes that "biogenic CO_2 associated with an electricity portfolio be disclosed on the power content label separately in a footnote but not be used in calculating the overall GHG emissions intensity of the electricity offering's"[12] The Revised Staff Proposal explains that "[t]his is consistent with IPCC GHG inventory accounting that attributes biogenic CO2 to the Agriculture, Forestry, and Other Land-Use sector; to avoid double-counting, IPCC guidance states that biogenic CO2 should not be counted in the electricity sector GHG emissions accounting."[13]

The inclusion of this information as a footnote is confusing and unnecessary. If the Commission agrees with the IPCC guidance that biogenic CO_2 should not be counted in electricity sector GHG emissions accounting, then a footnote is not warranted, and the issue of biogenic CO_2 is irrelevant to the PCL. Staff has not provided sufficient justification for this dual approach, where Biogenic CO_2 is properly excluded from the main calculation, but must be included in an alternate calculation in the first footnote of the PCL.

Adding this level of complexity is not "consistent with other requirements,"[14] particularly if the intent is to disclose "the GHG emissions intensity associated with their electricity products"[15] and provide "an accurate and transparent reporting of the renewable and emissions attributes associated with ***electricity serving retail customers***, while aligning with existing emissions accounting protocols used by California and other national ***and international***

[12] Revised Staff Proposal at 25.
[13] *Id.* at 24.
[14] Page 3 of the Revised Staff Proposal: "Assembly Bill 1110 (Ting, Chapter 656, Statutes of 2016) was enacted in 2016 requiring the addition of simple-to-understand and reliable greenhouse gas (GHG) emissions disclosures to California's electricity consumers. The bill specifically added the need for "consistent" information to the existing requirements of reliable, accurate, and timely information for consumers."
[15] Page 3 of the Revised Staff Proposal: "It also modifies the PSD Program by requiring retail suppliers to disclose the GHG emissions intensity associated with the electricity portfolios used to serve retail load."

organizations." To be consistent, the issue of biogenic CO_2 should not be included on the PCL, even if relegated to a footnote.

3. Timing of GHG Emission Intensity Updates

CMUA recommends that the label include the ability for retail sellers to clarify instances wherein the year-to-year emissions intensities varies outside of a certain bandwidth. While MRR data may show that "generators' year-to-year emissions intensities do not vary significantly," there are instances that could result in significant changes, which could skew a consumer's assessment of the retail provider's generation resources. For example, in 2017, the Roseville Energy Park suffered a significant and prolonged shutdown because its main turbine was down and needed to be replaced. In order to make the 2018 data meaningful in the context of the retail seller's overall generation resource portfolio, there should be an opportunity to explain such a circumstance.

III. CONCLUSION

CMUA appreciates the opportunity to provide these comments and looks forward to continue to work with staff in this proceeding.

Dated: October 25, 2018

Respectfully submitted,

Justin Wynne
Braun Blaising Smith Wynne PC
915 L Street, Suite 1480
Sacramento, CA 95814
(916) 326-5813
wynne@braunlegal.com

Attorneys for the
California Municipal Utilities Association