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## NCPA Comments on AB1110 Prerulemaking Draft Amendments

*Additional submitted attachment is included below.*

**BEFORE THE CALIFORNIA ENERGY COMMISSION**

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| **In the matter of:**<br>**AB 1110 IMPLEMENTATION RULEMAKING** | **Docket No. 16-OIR-05** |

# NORTHERN CALIFORNIA POWER AGENCY COMMENTS ON POWER SOURCE DISCLOSURE PROGRAM PRE-RULEMAKING AMENDMENTS

The Northern California Power Agency[1] (NCPA) submits these comments to the California Energy Commission (Commission) on the February 20, 2019 *Pre-Rulemaking Amendments to the Power Source Disclosure Program* (Proposed Amendments) and March 6, 2019 Workshop hosted by Commission staff.

## I. INTRODUCTION

The pre-rulemaking Proposed Amendments include revisions to the Power Source Disclosure (PSD) program to implement the mandates of Assembly Bill (AB) 1110 and update the regulation. NCPA appreciates staff's efforts to address concerns raised by stakeholders throughout this pre-rulemaking process. As explained in comments NCPA provided earlier this proceeding, it is imperative that the regulation not only incorporate revisions to the Power Content Label (PCL) that reflect the carbon intensity of the power used to serve California consumers, but also provide that data in a manner that provides meaningful information to consumers, and that recognizes load serving entities' compliance obligations under existing environmental and energy regulations and mandates. As NCPA has noted in comments already submitted during this process, the development of a meaningful and useful PCL must acknowledge the complexities of the way that electricity is procured, dispatched, and delivered to retail customers, as well as the existing contractual and ownership investments retail sellers have made in generation resources.

NCPA offers these comments in addition to the earlier comments provided in this proceeding, and urges staff to incorporate these further refinements into the regulatory amendments that will be presented for consideration later this spring.

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[1] NCPA is a nonprofit California joint powers agency established in 1968 to construct and operate renewable and low-emitting generating facilities and assist in meeting the wholesale energy needs of its 16 members: the Cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, Shasta Lake, and Ukiah, Plumas-Sierra Rural Electric Cooperative, Port of Oakland, San Francisco Bay Area Rapid Transit (BART), and Truckee Donner Public Utility District—collectively serving nearly 700,000 electric consumers in Central and Northern California.

### A. The Proposed Changes to the Label Provide Much Needed Simplification

The primary objective of the PCL is to provide transparency to customers about the electricity they consume. While that objective is simple enough, the way the state's electricity delivery system operates and the manner in which the underlying transactions are structured is not simple. In recognition of this distinction, NCPA appreciates the proposed revisions to the PCL that remove the multiple footnotes that were previously proposed, and rather reference those distinctions on the website. In addition, the Commission's website should also include the retail seller's PSD report itself. This additional level of transparency is necessary so that consumers can access these public documents and review the retail sellers' report upon which the label was developed, including any details on the label that may require additional clarification. While NCPA supports the proposed changes that definitely make the label easier for customers to review and understand, until the program can be more closely aligned with the reporting and data used for determining retail sellers' compliance with greenhouse gas (GHG) and renewable energy program mandates, there is still room for confusion.

### B. "Electric Service Product" Definition Should Recognize Third-Party Green Programs

NCPA urges the Commission to revise the definition of "electric service product" to recognize voluntary, third-party programs through which utility customers purchase renewable energy credits. Some utilities offer their customers the opportunity to participate in a voluntary "green" program. However, unlike green programs that are part of the retail seller's electricity portfolio, these green programs are administered by a third party, and are typically subject to certification by Green-e®. Customers who opt into these voluntary programs pay a fee per kilowatt hour for the third-party program administrator to purchase the environmental attributes of renewable energy on the customer's behalf. This transaction is not related to the provision of power by the utility for the customer and does not involve the sale of electricity. According to the Green-e rules, those environmental attributes may be from any of the following: California Renewable Energy Credits (RECs), Voluntary Renewable Energy (VRE) credits from the California Air Resource Board (CARB), or California GHG allowances.

The Commission has defined an *electric service product* as "a portfolio of electricity sources serving some or all retail customers in a retail supplier's service area over a calendar year." [CEC-3000-2018-001-REV3, page 23] These third-party, voluntary green programs should not fall under this definition because they do not serve any load or even result in the purchase of physical energy. Utilities that allow these programs within their service territory still build an electricity portfolio to serve their *entire* retail load. Participation in the program is merely an option for customers to support renewables by attributing value to their environmental attributes. Because these programs involve transactions that do not include provision of electricity to serve customers, these programs are not *electric service products* as defined by the Commission and as such should not be subject to the PSD regulations.

There are significant adverse consequences of treating these programs as if they are *electric service products*. These programs are not designed to procure power to serve load, but rather to comply with the Green-e rules for procurement of environmental attributes. Application of the PSD regulations will, by design, not recognize the value of those attributes. Consequently, a Power Content Label developed for the program will misleadingly portray the program as having little to no value. In fact, the program does have value – it simply cannot be assessed through the lens of an electricity portfolio since it is not one. This is confusing for ratepayers and undermines the laudable intent of these green programs. These programs provide environmental benefits separate and beyond those associated with the utility's electricity procurement or even its own RPS mandates. Furthermore, classifying these voluntary green programs as an electric service product results in the need for the utility to perform a separate audit; this is an onerous requirement especially given the fact that these programs are already certified through the Green-e audit process and have already been verified. Failure to recognize these programs as separate and distinct from actual electric service products that provide electricity to retail customers could have the ultimate outcome of these programs being discontinued, which would be a lost opportunity for customers who opt to support the environmental attributes of renewable generation.

### C. Section 1394.2 Should Allow for Public Agency Attestation of Additional Product Offerings

During the March 6 Workshop, staff asked for additional input on the required auditing provisions for public agencies. NCPA supports revisions to this section that allow public agencies to attest to additional electricity portfolios, and avoid unnecessary and often costly audits. Under the existing rule, retail providers with more than one product cannot attest to any more than one product, requiring the agency to complete an audit of any additional electricity portfolio. This requirement is particularly onerous for small public owned utilities that are seeking to expand the renewable energy options provided to their customers and provide a greater opportunity for community buy-in into greener resources. These electricity products are separate and distinct from third-party transactions for RECs; in the case of utility-administered electricity portfolios, the retail seller is actually providing a different renewable resource to a subset of customers.

For example, the City of Healdsburg, provides a *Green Rate* program for customers wishing to promote the development and use of renewable energy. Under the program, for an additional per kilowatt fee, the City procures, on the customer's behalf, renewable energy – not just RECs – to match the customer's monthly energy consumption. This program offers customers the option to increase the amount of renewable energy procured on their behalf, without potentially adversely impacting customers not able to pay a premium for additional renewable energy. This optionality enhances the City's ability to provide additional renewable resources. However, the City of Healdsburg is a small POU that provides electricity to less than 6,000 meters within its service territory; in order to audit this program, the City incurred a cost of $3,500. The additional expense to audit these programs can serve as a deterrent for public agencies to seek out these enhanced products for their customers, especially when such programs are likely to be limited in size and scope, which runs contrary to the State's environmental and clean energy objectives. In order to avoid these oft significant and unnecessary expenses, section 1394.2(a)(2) should be amended to allow public agencies to provide an attestation of the veracity of the annual report for more than one electricity portfolio.

### D. Grandfathered Firmed-and-Shaped Resources Should Not be Subject to Sunset Provisions

Both the October 2018 Staff Report and the February 2019 Proposed Amendments reflect the need to recognize the substantial investment that utilities have made in RPS-eligible renewable contracts that are firmed-and-shaped. The Staff Report noted that for contracts entered into *after* February 1, 2018, the date that Staff determined stakeholders were duly notified of the CEC intent to treat these resources differently under the PCL than under the state's RPS program, the emissions from these resources would be listed under the GHG intensity of the substitute power and not the underlying renewable resource. NCPA appreciates staff's recognition that firmed-and-shaped resource investments that were entered into prior to February 1, 2018 should reflect the carbon intensity on the PCL in the same way they are recognized under the RPS program, with the GHG emissions from the substitute power excluded from the calculation of emissions intensity. NCPA also appreciates Staff's further recognition in the Proposed Regulations that the treatment of pre-February 2018 firmed-and-shaped resources should not be subject to a sunset provision. As stakeholders have pointed out, retail sellers have made considerable investments in RPS-eligible renewable resources, the value of which would be significantly diminished if the PCL failed to reflect the GHG intensity of the resource itself. Further, as those comments reflected, Staff's reasonings for establishing the sunset provision did not take into account the underlying transactions at issue. While some stakeholders objected to the lack of a sunset provision, they provide no justification for the application of an arbitrary cut-off after which date the delivery of electricity under the same contract or ownership agreement would be reported differently.

In order to ensure that the provision adequately covers all pre-February 1, 2018 investments in firmed-and-shaped resources, section 1393(d)(1) should reference renewable firmed-and-shaped products under a contract <u>or ownership agreement</u> executed <u>or entered into</u> prior to February 1, 2018. Further, the provisions of section 1393(d)(1)(A) should be refined to include not just "a purchase contract substantiating that a firmed-and-shaped product meets the requirement," but also allow for furnishing ownership agreements for such resources.

> 1393(d)(1) Retail suppliers with specified purchases of renewable firmed-and-shaped products under a contract <u>or ownership agreement entered into or</u> executed prior to February 1, 2018 shall report GHG emissions associated with the substitute electricity pursuant to Section 1393.
>
> (A) When calculating the emissions intensity of an electricity portfolio that includes one or more firmed-and-shaped products purchased under a contract executed prior to February 1, 2018 <u>or ownership agreement entered into prior to February 1, 2018</u> . . . The retail supplier shall furnish a purchase contract <u>or ownership agreement</u> substantiating that a firmed-and-shaped product meets the requirement above for each annual filing claiming the GHG emissions exclusion."

### E. Non-RPS eligible renewables needs to be distinguished from "non-renewables."

To ensure that retail customers have an accurate depiction of the retail seller's procurement of non-GHG emitting resources, the accounting methodology used in the PSD regulation must allow for a distinction between "non-renewables" and renewable resources that are not RPS-eligible. The way in which the accounting methodology is employed, non-RPS eligible renewable resources are not appropriately apportioned to the retail load in a manner that recognizes the retail seller's investments, including investments in non-RPS eligible resources that pre-date the RPS program and the PCL. These resources include a premium on large hydro investments that cannot be reclaimed if sold, as well as investments in non-RPS-eligible renewable resources that include contractual prohibitions on resale. By applying the current equation set forth in 1393(a), and in particular subsection (a)(6), the Commission is dictating which resources entities can count on a volumetric basis as delivered to their retails sales without taking into account the underlying procurement practices of the retail seller, the cost of the resources, or contractual restrictions on those resources. The PCL should not adversely impact the ability of utilities to dispatch the resources they have invested in on behalf of their customers to be delivered to those customers. NCPA urges staff to work with stakeholders on revising the accounting methodology so that the equations account for these variables that are currently unrecognized, including distinguishing between non-renewable resources and non-RPS eligible renewables.

While NCPA has not endorsed the clean-net-short proposal advocated by some parties, we are encouraged by the Commission's commitment to look more closely at the issue of aligning procurement, dispatch, and retail demand to more accurately reflect the retail sellers' procurement actually delivered to its customers in a future review of the PSD regulation. In the interim, however, NCPA urges the Commission to address the inequitable apportionment assumptions in section 1393 discussed herein.

## II. CONCLUSION

NCPA reiterates its appreciation for Staff's work on the important issues stakeholders have raised during this pre-rulemaking process, and urges the further refinements addressed above. Please do not hesitate to contact the undersigned or Scott Tomashefsky at 916-781-4291 or scott.tomashefsky@ncpa.com with any questions.

Dated this 20th day of March 2019.

Respectfully submitted,

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