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**16-OIR-05 -- TURN comments on Draft Regulatory Amendments**

*Additional submitted attachment is included below.*

**STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

In the matter of:

AB 1110 Implementation Rulemaking

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Docket No. 16-OIR-05

**COMMENTS OF THE UTILITY REFORM NETWORK ON  
THE DRAFT REGULATORY AMENDMENTS TO  
THE POWER SOURCE DISCLOSURE PROGRAM**

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**COMMENTS OF THE UTILITY REFORM NETWORK ON  
THE DRAFT REGULATORY AMENDMENTS TO  
THE POWER SOURCE DISCLOSURE PROGRAM**

In response to the September 20, 2019 notice of lead commissioner workshop, The Utility Reform Network (TURN) submits these comments on the draft regulatory amendments to the Power Source Disclosure Program (Draft Amendments). TURN generally supports the draft regulations and urges the Commission to adopt them with few changes. The proposed regulations strike the proper balance between competing objectives, result in more accurate disclosures to customers, and create greater alignment between the Greenhouse Gas (GHG) accounting methodologies used by the Energy Commission, Public Utilities Commission (CPUC), and California Air Resources Board (CARB).

TURN offers four specific comments on the draft regulations. The first relates to the grandfathering treatment of firmed-and-shaped resource contracts. The second applies to the treatment of resources contracted by the Investor-Owned Utilities (IOUs) pursuant to the Cost Allocation Mechanism (CAM). The third relates to the timing of the mailing of the Power Content Label by a retail supplier to customers. The fourth addresses the approach to determining the contribution of unspecified resources when the retail supplier reports total procurement in excess of retail sales.

**I. GRANDFATHERING TREATMENT FOR FIRMED-AND-SHAPED  
PROCUREMENT**

The draft regulations allow retail suppliers to report emissions intensity for “firmed and shaped” electricity procured under a “purchase agreement or ownership agreement” executed prior to January 1, 2019 based on the emissions of the source of the associated Renewable Energy Credits (RECs) rather than the

source of the substitute electricity.<sup>1</sup> TURN urges the Commission to clarify that the grandfathering treatment only applies to the minimum procurement quantities and durations specified in any contract executed prior to January 1, 2019.

The Energy Commission previously grappled with a similar concern relating to the treatment of grandfathered contracts for pipeline biomethane under the Renewable Portfolio Standard (RPS) program. Pursuant to the requirements of AB 2196 (2012), the Energy Commission applied the statutory grandfathering date of March 29, 2012 to any contract involving biomethane used to produce RPS eligible electricity.<sup>2</sup> In implementing this requirement, the Energy Commission required any retail seller or local publicly owned electric utility to submit contracts seeking grandfathering treatment for review in order to confirm eligibility. This review was intended to ensure that eligible contracts were executed and approved prior to the grandfathering date, that any optional quantities (at the discretion of the buyer) were not included in the grandfathering, and that the grandfathering did not apply to any future amendments or extensions relating to the duration of the contract or increases in quantities.

The same review applied to grandfathered biomethane contracts should be used for firmed-and-shaped contracts eligible for the grandfathering treatment under the proposed regulations. Specifically, each retail supplier claiming a grandfathered commitment should be required to do all of the following:

- Submit any firmed and shaped contract executed prior to January 1, 2019 for review by Energy Commission staff.

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<sup>1</sup> Proposed §1393(d)(1).

<sup>2</sup> Cal. Pub. Util. Code §399.12.6;

- Demonstrate that the grandfathering is limited to the minimum quantities included in the original contract and does not include any optional increases that can be exercised at the discretion of the buyer.
- Demonstrate that the grandfathered quantities do not include any subsequently negotiated contract extensions or other amendments that increase the quantity or duration of procurement.

TURN believes that these showings will preserve the proposed treatment for commitments made prior to the cutoff date and prevent abuses or manipulation that would subvert the intent of the grandfathering provision. Absent these restrictions, retail sellers may attempt to renegotiate, extend the duration, and increase the quantity of resources procured under grandfathered contracts. Such modifications should not be encouraged or permitted.

Under no circumstances should the Commission extend the grandfathering date to include any contracts that have yet to be executed by retail suppliers. Recent experience with grandfathering at both the Energy Commission and Public Utilities Commission demonstrates that setting a prospective date for grandfathering creates an incentive for market participants to negotiate last-minute deals prior to the deadline. In the case of pipeline biomethane, the Energy Commission established a prospective date for the suspension of eligibility that resulted in a substantial volume of new transactions by market participants seeking to take advantage of grandfathering treatment. In the case of the direct access suspension authorized by ABx1 (2001), the Public Utilities Commission set a prospective date that resulted in a scramble of last-minute contracts, some of which were executed in the days and hours prior to the deadline. In the case of PSDP rules, it would be a major mistake to set a future date that invites buyers

and sellers to execute new and incremental transactions in the moments before grandfathering becomes effective.

## **II. TIMING OF POWER CONTENT LABEL MAILING TO CUSTOMERS**

The proposed regulations would require that the power content label be mailed by a retail supplier to its customers on or before August 30<sup>th</sup> of each calendar year.<sup>3</sup> During workshops, representatives from Publicly Owned Utilities expressed concern about this early date due to challenges associated with internal processes and the need for timely action by local governing boards. TURN urges the Commission to consider what measures could be adopted to permit individual Publicly Owned Utilities to request delays in the mailing date to accommodate legitimate concerns. Any delays could be limited to materials sent by postal mail that require additional lead time for printing and physical distribution.

## **III. TREATMENT OF RESOURCES PROCURED UNDER THE COST ALLOCATION MECHANISM**

The draft regulations propose new treatment for the attribution of generation from resources under contract with the Investor Owned Utilities (IOUs) pursuant to the Cost Allocation Mechanism (CAM). These resources are procured by the IOUs at the direction of the CPUC to satisfy reliability needs on behalf of all customers including those served by Electric Service Providers (ESPs) and Community Choice Aggregators (CCAs).

The regulations would require IOUs to report “the portion of procurement attributable to the investor-owned utility”.<sup>4</sup> Under this approach, the IOU would

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<sup>3</sup> Proposed §1394(b)(2).

<sup>4</sup> Proposed §1393(a)(5).

report a share of the output while the remaining generation would not be attributed to any retail supplier. TURN urges the Commission to reconsider this proposal. Electricity produced by CAM facilities is not used to exclusively serve IOU bundled customer loads. The net costs of the resources are collected from all customers (including those served by ESPs and CCAs) through a nonbypassable rate component. ESPs and CCAs receive a proportional share of the Resource Adequacy (RA) value from these resources based on the costs charged to their customers. The CAM resources should therefore be understood to serve all customers located within an IOU service territory.

The portion of resources subject to the CAM may grow in the coming years due to the increasing reliance on IOUs to perform backstop procurement relating to both Resource Adequacy (RA) and Integrated Resource Planning (IRP). In the IRP proceeding, the Public Utilities Commission is poised to approve a decision that directs the procurement of 4,000 MW of new generating resources. Under the Proposed Decision, the IOUs would be responsible for serving as the backstop procurement agent pursuant to Public Utilities Code §454.51.<sup>5</sup> In the event that IOUs are explicitly procuring new resources on behalf of other retail suppliers, there is no reason to avoid attributing the output to the relevant retail supplier as part of the Power Source Disclosure Program.

Consistent with this understanding, TURN urges the Energy Commission to assign the output and emissions of CAM resources to all retail suppliers based on their load share within the IOU service territory. Each retail supplier would be obligated to show this information on their PCL as a separate line-item and the assigned GHG emissions would be included in the GHG emissions intensity calculation.

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<sup>5</sup> Revised Proposed Decision of ALJ Fitch, R.16-02-007, issued October 21, 2019.

If this approach is unacceptable or impractical, the regulations should allow each IOU to exclude CAM resources from the portfolio serving bundled customers and instead submit this procurement as part of a separate portfolio that receives its own PCL. That PCL would be assigned a separate GHG emissions intensity. All retail suppliers paying for the costs of these resources would be required to notify their customers about this separate PCL and include the information in materials posted on their website. This approach would recognize that the energy produced by CAM resources is used to serve the customers of all retail suppliers. The submission of a separate PCL would ensure that all customers are informed that these resources were procured, in part, on their behalf to meet reliability needs.

**IV. EXCESS PURCHASES SHOULD BE PROPORTIONALLY DISCOUNTED TO AVOID A RESULT THAT IGNORES ACTUAL RELIANCE ON UNSPECIFIED POWER**

The proposed regulations would calculate a retail supplier's reliance on unspecified sources of power based on the delta between total retail sales and specified purchases.<sup>6</sup> For retail suppliers with more reported procurement than retail sales, this methodology may not reasonably reflect a retail supplier's reliance on unspecified power because it masks the extent to which there is a disconnect between the hourly profile of specified sources and customer loads.

As explained in the initial statement of reasons, the reporting of total purchases in excess of 100% of retail sales often results from sales of excess electricity into wholesale markets associated with specified purchases.<sup>7</sup> These sales occur when total generation for specified sources procured by the retail supplier exceeds its customer load in a given hour. While the electricity from such resources is sold

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<sup>6</sup> Proposed §1393(a)(4).

<sup>7</sup> Initial Statement of Reasons, page 14.

into wholesale markets, the associated environmental attributes remain with the retail supplier. In hours when there is insufficient generation from specified sources to meet customer load, the retail supplier must cover any deficiency with unspecified purchases.

The proposed calculation fails to differentiate between one retail supplier that matches specified generation purchases exactly to hourly loads and another that relies heavily on unspecified resources to meet its needs during peak system conditions and massively overprocures specified resources during off-peak hours. By failing to differentiate between these two behaviors, the proposed calculation does not provide an accurate portrait of the power sources and associated environmental impacts for a particular portfolio.

TURN recommends that the Commission instead proportionally adjust the contribution of unspecified and specified supplies. Under this approach, a retail supplier reporting procurement in excess of 100% of its retail sales would have the contribution of both specified and unspecified resources discounted proportionately. An illustrative example of this approach is as follows:

	<b>Nominal</b>	<b>Adjusted</b>
Specified resources	80,000	66,667
Unspecified resources	40,000	33,333
Total purchases	120,000	100,000
Retail sales	100,000	100,000
Excess purchases (%)	16.7%	

This alternative approach would ensure retail sellers are required to report unspecified purchases as a proportion of their overall procurement. TURN urges the Commission to consider this alternative as a more accurate representation of the resources used to serve customers.

TURN appreciates the opportunity submit these comments and looks forward to the approval of revised Power Source Disclosure regulations.

Respectfully submitted,

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