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NCPA Comments re Power Source Disclosure Program Amendments

Additional submitted attachment is included below.

BEFORE THE CALIFORNIA ENERGY COMMISSION

**In the matter of:
AB 1110 IMPLEMENTATION RULEMAKING**

Docket No. 16-OIR-05

**NORTHERN CALIFORNIA POWER AGENCY
COMMENTS ON MODIFICATION OF REGULATIONS GOVERNING
THE POWER SOURCE DISCLOSURE PROGRAM**

The Northern California Power Agency¹ (NCPA) submits these comments to the California Energy Commission (Commission) on the Modification of Regulations Governing the Power Source Disclosure Program (Proposed Amendments) released by the Commission on September 6, 2019. These comments are filed in addition to the earlier comments provided by NCPA in the pre-rulemaking phase of this proceeding, and to that end, NCPA respectfully requests that staff to incorporate these further refinements into the regulatory amendments that will be presented for consideration later this fall. With the exception of the first comment, which is more general in nature, comments are provided in an order that is consistent with the sequencing of the current regulations.

I. The CEC Should Consider Moving Back the Effective Date of the Regulation by 12 Months

The proposed amendments to the Power Source Disclosure Regulation make a number of changes to the existing rules for reporting fuel mix and implement brand new requirements for calculating emissions intensity of the fuels used in retail sales. NCPA urges the Commission to delay the first reporting year under the proposed amendments to the 2021 reporting year, applied to retail sales in 2020.

The Initial Statement of Reasons (ISOR) notes that “AB 1110 (Stats. 2016, ch. 656) modified the PSD Program and Power Content Label by requiring retail suppliers to disclose the greenhouse gas (GHG) emissions intensity (the rate of emissions per unit of electricity) associated with each electricity portfolio beginning in 2020 for the 2019 reporting year.” (ISOR

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.

p. 1) For that reason, the Commission has proposed that all of the new reporting requirements, including the various changes in the calculation of fuel mix and emissions intensity, be effective immediately. However, PU code section 398.1(k)(2)(F)(i) also provides that “On or before January 1, 2018, adopt guidelines, through an open process, subject to public comment, and adopted by a vote of the Energy Commission, for the reporting and disclosure of greenhouse gas emissions intensity associated with retail sales based on the requirements of this subdivision. Beginning June 1, 2020, retail suppliers shall be required to report data on greenhouse gas emissions intensity associated with retail sales occurring after December 31, 2018.” The legislation itself contemplated a period of time during which the final guidelines for reporting and disclosing GHG emissions intensity would be effective before retail sellers were required to use those guidelines. The legislation envisioned a full year for retail sellers to plan and prepare for the new reporting provisions, during which time the actual processes would already have been established, and another five months for compiling that data before submitting it to the Commission.

As proposed, the new reporting provisions will be in effect for mere months before retail sellers are required to submit the information consistent with the new reporting templates. And it is unknown how long the final spreadsheets and templates will be available before they must be submitted or how much opportunity affected entities will have to review and potentially troubleshoot the final templates before they must be submitted. Further, the new provisions themselves – those that would be reflected in the revised templates – would not have been in effect at any time during the year for which the data is being reported.

Instead of moving forward with a 2020 effective date for 2019 data, NCPA recommends that the Commission defer the effectiveness of the new provisions until the 2020 data is reported in 2021. That timing would be consistent with the timeline outlined in the enabling legislation and would allow the Commission and affected stakeholders the opportunity to address implementation issues during the ensuing year, including development of the necessary reporting template. The intervening year could also would give the Commission and stakeholders an opportunity to test the changes to make sure that the all calculations are working correctly.

NCPA notes that the deferred final implementation has precedent at regulatory agencies. For example, when the California Air Resources Board first adopted the Mandatory Report Regulation in 2008, 2009 reporting was used as a “test year,” allowing stakeholders to submit

info on a best efforts' basis, and delaying the first compliance report to 2010. Similarly, this Commission delayed implementation of its own RPS online reporting tool after it was developed in order to allow for a stakeholder focus group to test the system for flaws, and give the agency time to address any unforeseen shortcomings. Both efforts lead to a more effective reporting system devoid of significant issues once they were formally deployed. Such a change here would make it more likely that the emissions information that is provided to consumers is more accurate.

Again, NCPA notes that the PSD is a reporting-only regulation, and not one that directly impacts a utility's procurement or resource planning requirements. However, that is no reason to dismiss the importance to utilities of providing timely and accurate information to their customers. A rush to submit information without the time to vet and address potential implementation glitches is not in the public interest. It could result in needlessly wasting retail seller and Commission resources (both staffing and financial) and potentially provide customers with inaccurate information.

II. Section 1393 – Treatment of Large Hydro Resources

As noted, the purpose of the PCL is to provide retail electricity consumers “accurate, reliable, and simple to understand information on the sources of energy that are used to provide electric services.” (See ISOR, p. 1; SB 1305 (Stats. 1997, ch. 796), section 398.1, subd. (b).) The state legislature also passed SB 100, which makes it the “policy of the state that eligible renewable energy resources and zero-carbon resources supply 100 percent of all retail sales of electricity to California end-use customers” (Public Utilities Code section 454.53. (a)) As the state begins to focus on the increased 2030 renewable portfolio standard (RPS) goals, and more broadly the 2045 carbon free objectives set forth in SB 100, it is important that consumers reviewing the Power Content Label (PCL) have a clear understanding regarding the important role hydroelectric resources play in meeting a utility's resource mix. To do so, the PCL must fully recognize the zero-GHG nature of large hydro, notwithstanding the fact that it is not an RPS-eligible resource.

In the current Power Content Label calculation, total utility purchases are normalized so that the total megawatts reported equal retail sales. To the extent total purchases exceed retail sales, all resources not considered to be RPS eligible are reduced on a pro rata basis, including hydroelectric resources, without regard for the renewable nature of this resource. As set forth in the Proposed Amendments, over-procurement is reduced in the following order: natural gas,

followed by coal and other fuels, followed by nuclear and large hydro. (Section 1393(a)(6)) The Commission must ensure that the equation used to reconciling total procurement with retail sales does not “force”, even on paper, the appearance that entities that have contracts for federal power delivered by the Western Area Power Administration are “laying off” a resource they are contractually required to use for their retail customers. Under federal contract provisions, these customers are prohibited from laying off federal power intended to serve retail customers (*See* WAPA General power contract 00-SNR-00352; WAPA General Power Contract Provision 17).²

Beyond the restrictions regarding the layoff of federal hydro resources, making this adjustment is inconsistent with the treatment of hydro resources in the RPS program. Under SB 1393 provisions, any over-procurement due to excess hydro generation from projects signed before 2015 can result in a reduction in the procurement of RPS-eligible resources. (Public Utilities code section 399.30(l)). In light of this, NCPA believes that there are several ways that the Commission can address this issue in the proposed PCL spreadsheet. Regarding treatment of federal hydropower, a new dropdown category could be created entitled “Federal Large Hydro” and any federal resource would simply not be included in the stepdown calculation to the extent a utility’s purchases exceed retail sales. This can be explicitly excluded from the total calculation. In the alternative, the spreadsheet can just ignore the stepdown of all hydro that is used for retail consumption.

III. Section 1393(d) – Excluded Emissions, Firmed-and-Shaped Resources

Throughout the pre-rulemaking and formal rulemaking phase of this proceeding, staff has acknowledged the need to recognize the significant investments that retail sellers have made in RPS-eligible renewable contracts that are firmed-and-shaped. The Proposed Amendments and ISOR further affirm this recognition. Section 1393(d) of the Proposed Regulation provides that “Retail suppliers with specified purchases of eligible firmed-and-shaped products under a purchase agreement or ownership agreement, executed prior to January 1, 2019, shall report GHG emissions associated with the delivered electricity and shall identify these emissions as excluded from the calculation of emissions intensity of the electricity portfolio.” And the ISOR

² The ISOR states this calculation method for adjusting a retail suppliers net electricity procurement so that it matches retail sales is also “necessary to ensure the Power Content Label meets the statutory requirements of being simple to understand and to disclose information that is accurate and reliable.” (ISOR, p. 14) However, to the extent that it contravenes express contractual requirements between retail suppliers and WAPA, the information provided is neither simple to understand, nor accurate for the affected customers.”

states that the provisions of section 1393(d) are necessary to acknowledge retail suppliers' early investments in firmed-and-shaped resources (ISOR, p. 22) Doing so recognizes that that firmed-and-shaped resource investments that were entered into prior to January 1 ,2019 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.

However, while the ISOR states that the Proposed Amendments include language that “parallels regulatory provisions in the RPS Program dealing with when an extension or modification will remove a contract from the grandfathering provision,” (ISOR, p. 23) the proposed text in section 1393(d)(1)(B) does not parallel the RPS language. As proposed, section 1393(d)(1)(B) states that “Retail suppliers with specified purchases of eligible firmed-and-shaped products under a purchase agreement or ownership agreement that has been amended or extended on or after January 1, 2019, shall report GHG emissions according to the source of the delivered electricity for inclusion in the GHG emissions intensity calculation.” This does not parallel the RPS grandfathering, as the RPS regulation would remove a contract from a grandfathering provision only if the amendments and modifications increase nameplate capacity or expected quantities of annual generation, increase the term of the contract if the initial term was less than 15 years, or substitute a different eligible renewable energy resource. (Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities, April 2016; Section 3202(a)(2) and (3).) By making a blanket prohibition on lawful contract modifications and amendments in the regulatory text of the PCL, the PCL does not parallel the RPS regulation and would create confusion.

IV. Section 1394.1(b)(2) – August 30th Deadline to Publish the PCL is Unworkable

NCPA is concerned that the revision to section 1394.1(b)(2) requiring the final PSD to be provided to customers by August 30 is not implementable. The ISOR states that “the Energy Commission finds it necessary to assign a specific date consistent with the statutory language by which retail suppliers must provide Power Content Labels to consumers. The Energy Commission selected August 30, as the last potential date that a complete billing cycle in the third quarter of the year would conclude.” (ISOR p. 28) The ISOR states that this is necessary to meeting the statutory requirement that the “disclosures required by this section shall be made annually to end-use consumers of the offered electricity. The annual disclosure shall be made by the end of the first complete billing cycle for the third quarter of the year, and shall be consistent

with information provided to the Energy Commission pursuant to Section 398.5.” (Public Utilities Code section 398.4(c)) A retail supplier may distribute the disclosures required by this section via email to any end-use consumer that has consented to receive email in lieu of printed materials.”

The ISOR’s rationale for imposing an August 30 deadline is needlessly restrictive and contrary to the rules of statutory interpretation. As the ISOR notes, “the end of the first complete billing cycle” can vary depending on utility billing practices. But the Commission must interpret the statutory provisions in a way that makes sense and furthers the objectives of the legislation. The label was established “in an effort to provide retail electricity consumers ‘accurate, reliable, and simple to understand information on the sources of energy that are used to provide electric services.’” (ISOR, p. 1; citing SB 1305 (Stats. 1997, ch. 796), section 398.1, subd. (b)) Under the proposed regulation, retail sellers would be required to provide GHG emissions information to customers before it has been subject to a final review by an auditor or attested-to by a public agency’s local governing body. Therefore, it makes more sense for the final disclosure deadline to be directly linked to the deadline for completing those audits and attestations. Furthermore, retail sellers cannot complete their annual PCL before the Commission issues the annual template. After the template is received, the retail seller must go through the necessary internal processes to collect the necessary data and timely submit the form to the CEC. It is not until the form is complete that the utility can then prepare the document for dissemination to its customers. As several publicly owned utilities have stressed throughout the pre-rulemaking and rulemaking process, it is simply not logistically possible to prepare, finalize, publish, and then disseminate (via mail or email, were necessary) the final label to customers. Ignoring these very practical implications in implementing the statutory provisions would make the PCL less accurate.

NCPA appreciates that formally recognizing the need for a specific date may best be addressed through the legislature providing explicit clarification. However, in the interim, NCPA believes that the proposed changes to section 1394.1(b)(2) should be rejected.

V. Section 1394.1(j) – Additional Information Must Be Allowed on the PCL as a Footnote

The legislature specifically recognized that some retail sellers may want to provide their customers with additional information on the PCL that may not be fully captured in the tables or existing footnotes. Section 1394.1(j) allows retail sellers to submit proposed information for the

Commission's review; while the provision requires that such information be provided by June 1 annually, it does not specify when or how a retail supplier will be notified of the results of the Commission's review. In order to provide retail suppliers sufficient time to prepare annual reports and information to be included in their PCL, NCPA recommends that Section 1394(j) be modified to require the Commission to provide a response within 10 days of the submission of the proposed additional information.

VI. Section 1394.2 – Audits and Attestations

NCPA supports the Proposed Amendments to Section 1394.2 regarding the ability of public agencies to attest to the veracity of the annual report and power content label for the previous year. As the ISOR notes, requiring auditing of additional electricity portfolios is financially prohibitive for smaller public agencies. (ISOR, p. 33) This financial burden could bar or deter these entities from providing diverse product offerings to their customers. The amendments to this section are further supported by the fact that public agencies must already submit their annual reports to their governing bodies for approval and that the Energy Commission has not experienced any problems with allowing public agencies to provide the attestation for a single product under the existing rules (ISOR, p. 48). NCPA supports the proposed change to section 1394.2, and the sound rationale set forth in the ISOR.

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 28th day of October 2019.

Respectfully submitted,



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