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SFPUC Comments on POU RPS Rulemaking

Attached are the comments of the San Francisco Public Utilities Commission on the CEC's proposed modifications to its RPS regulations applicable to publicly-owned utilities (POUs)

Additional submitted attachment is included below.



June 22, 2020

California Energy Commission
 Via e-mail

DOCKET: 16-RPS-03

Comments of the San Francisco Public Utilities Commission (SFPUC) on the California Energy Commission’s (CEC’s) Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities

RECOMMENDED CHANGE TO PROPOSED REGULATIONS: The CEC should clarify in its Final Statement of Reasons (FSOR) that a customer can participate in both the green tariff and LCFS programs without the need to “double retire” Renewable Energy Credits (RECs)

Dear Sir/Madam:

The SFPUC is greatly concerned over the interaction of the CEC’s proposed green tariff requirements and the ability to participate in the California Air Resources Board’s (CARB’s) Low Carbon Fuel Standard (LCFS) program. The LCFS program is one of California’s major initiatives to reduce Greenhouse Gas (GHG) emissions from the transportation sector, which creates almost 1/2 of California’s current GHG-emissions.^{1,2} While CARB recently changed its LCFS regulation to encourage the use of green tariff programs to promote electric vehicle (EV) development and transportation electrification, Section 3204(b)(9)(B)(3) of the CEC’s proposed amended regulations takes a contrary approach and would preclude a customer from receiving any LCFS credits based on participating in a green tariff program. This significantly reduces the incentives the LCFS program provides to EV customers and makes it more

- London N. Breed**
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- Sophie Maxwell**
Commissioner
- Tim Paulson**
Commissioner
- Harlan L. Kelly, Jr.**
General Manager

¹ The LCFS program seeks to reduce the GHG-intensity of California’s transportation fuels by 20% by 2030. (CARB’s Microsoft PowerPoint 2018 LCFS Background Website (p. 6). GHG-reductions from this program are comparable (15 million tons by 2020) to RPS program reductions of 21 million tons by 2020. (CARB AB32 Scoping Plan, Appendix E).

² California Energy Commission Transforming Transportation Fact Sheet, p. 1 (January, 2019). CARB’s Microsoft PowerPoint 2018 LCFS Background Website (p. 4).

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difficult to achieve Governor Newsom's goal of having 5 million EVs on the road by 2030.³

As discussed below, the CEC's interpretation of the term "monetized" in its Initial Statement of Reasons incorrectly concludes that a retail customer cannot participate in both a POU green tariff program and CARB's LCFS program. This interpretation is not supported by statute and is inconsistent with CARB's interpretation of the green tariff provisions of its LCFS program. If implemented without change, the proposed regulations would establish inconsistent treatment between POU green tariff programs and their investor-owned utility (IOU) counterparts. Finally, as currently written the proposed regulations would severely hinder California's achievement of its GHG-reduction goals.

Hetch Hetchy Power, the SFPUC's publicly-owned utility (POU) participates in CARB's LCFS program, providing zero-greenhouse gas (GHG) energy to one of the nation's largest fleets of electric-powered buses, light rail vehicles, and cable cars. For the following reasons, the CEC should revise its proposed regulations to ensure that customers can participate in both the green tariff and LCFS programs.

THE CEC'S APPLICATION OF THE MONETIZATION REQUIREMENT IS NOT SUPPORTED BY PUBLIC UTILITIES CODE SECTION 399.30(c)(4)

The proposed regulations define "monetized" as:

To earn revenue or value from the RECs that are retired in a WREGIS subaccount designated for the benefit of participating customers...⁴

What is troubling is that the accompanying Initial Statement of Reasons⁵ goes a step further and incorrectly concludes that:

This definition would preclude a POU from retiring RECs on behalf of the participating customer for both the RPS retail sales reduction and participation in CARB's Low Carbon Fuel Standard (LCFS) program, as it currently exists. RECs retired for purposes of the current LCFS are used to substantiate claims of low-carbon electricity and factor into the

³ Governor's Executive Order B 48-18 to put 5 million EVs on the road by 2030 and 250,000 EV chargers to support them.

⁴ CEC Proposed Regulation Section 3204(b)(9)(b)(3).

⁵ California Energy Commission Initial Statement of Reasons for the Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities, (hereinafter referred to as CEC RPS ISOR), p. 31.

determination of LCFS credits, which have a monetary value accrued to a specific entity and represent a further monetization of retired RECs. (emphasis added)⁶

The CEC's proposed interpretation of "further monetization", in the ISOR (the statute uses the term "otherwise monetized") fails to consider how this interacts with the entirety of PU Code Section 399.30(c)(4).

The first provision of section 3204(b)(9)(b)(3) states that green tariff sales (and their associated RECs) are "excluded from" the calculation of retail sales subject to RPS requirements. As the Sacramento Municipal Utility District (SMUD) noted,⁷ the use of the term "exclude" means that these sales and RECs are not being applied to meet a POU's RPS obligation and are therefore available for other uses. This is consistent with the CPUC's conclusion for its Green Tariff Shared Renewables Program, that; "these RECs shall not be counted towards Renewable Portfolio Standard compliance requirements."⁸

SMUD contrasts the use of the statute's use of "exclude" as opposed to the use of "subtract", which was in the CEC's previous version of the draft regulations, which implies that green tariff sales are being used to reduce a POU's otherwise applicable RPS requirement.⁹

While the CEC accepted SMUD's proposal, changing "subtract" to "exclude" in the latest version of the proposed regulations, this change has not been carried over to the definition of "monetization". The CEC's ISOR, for example, continues to incorrectly state that RECs are being retired "on behalf of the participating customer for both the RPS retail sales reduction and participation in CARB's Low Carbon Fuel Standard (LCFS) program."¹⁰ As noted above, and reflected in the CEC's current version of its proposal, these RECs are not being "retired" for the RPS retail sales reduction. Instead, these retail sales are "excluded from" the calculation of retail sales. The ISOR's statement is also inconsistent with the definition of "Retire" which "means to commit the REC to be used for compliance with the RPS, except as provided in Section 3204(b)(9)"¹¹ which governs the green tariff.

⁶ CEC RPS ISOR, p. 30.

⁷ SMUD's January 17, 2020 Comments on this Rulemaking.

⁸ D.15-05-051, p. 51. This section of the CPUC decision is cited in the CEC RPS ISOR, p. 30.

⁹ A useful comparison are federal income tax returns where some revenues are "excluded" and not even required to be reported, while other revenues are allowed to be "deducted in determining total revenue.

¹⁰ CEC RPS ISOR, p. 30.

¹¹ CEC Proposed Regulations, Section 3201(jj).

As SMUD stated in its comments,

While seemingly minor, this change [the use of the term “subtract” rather than “exclude”] can result in undesired interpretations of how RECs retired for voluntary renewable programs (and only for this purpose) are being used, and specifically whether RECs are used for multiple programs.¹²

This leads to the second provision of PU Code Section 399.30(c)(4). The RECs associated with green tariff sales are not being used for RPS compliance but are instead, consistent with the statute, “retired on behalf of the participating customer”¹³ and “designated for the benefit of participating customers.”¹⁴

Many customers benefit economically from participation in a green tariff program. The ISOR allows customers to use the green tariff to meet Title 24 mandated new solar building requirements.¹⁵ The CPUC specifically required the IOU’s green tariff programs to also meet green-e eligibility requirements¹⁶ which customers can then use for such “monetizing” activities as LEED certification and green product claims that allow them to “earn revenue or value” from their participation. These activities are similar to a customer’s participation in CARB’s LCFS program.

In all of these cases, it is the customer’s participation in the green tariff program that provides the benefits, not the initial REC retirement. Consistently applied, the CEC’s interpretation of “monetize” would preclude any green tariff participation that provides any increased value to a customer including all of the activities listed above. This overly broad restriction is unlikely to have been the intent of the Legislature when it adopted PU Code Section 399.30(c)(4).

¹² SMUD’s January 17, 2020 Comments on this Rulemaking, p. 5.

¹³ Public Utilities Code Section 399.30(c)(4).

¹⁴ CEC Proposed Regulation Section 3204(b)(9)(b)(3).

¹⁵ CEC RPS ISOR, p. 31. The new solar standards are contained in Title 24 10-115.

¹⁶ D.15-05-051, p. 89.

THE CEC'S "DOUBLE RETIREMENT" REQUIREMENT FOR LCFS PARTICIPATION IS NOT SUPPORTED BY LEGISLATION OR CARB REGULATIONS

The CEC's current interpretation of green tariff requirements would require that a customer would need two RECs in order to participate in a green tariff program one REC for participation in a green tariff program and then a second REC to meet LCFS requirements. This "double retirement" would significantly increase the cost of LCFS participation, hindering achievement of California's GHG reduction goals. Under this "double retirement" obligation it would not even be possible for an IOU Green Tariff Shared Renewable customer to participate in the LCFS program as PU Code Section 2833(g) does "not allow a customer to subscribe to more than 100 percent of the customer's electricity demand." Thus a customer would have to go outside the GTSR program to acquire the additional RECs to meet a LCFS requirement. This outcome renders superfluous the entire green tariff discussion contained in CARB's LCFS regulation.

In its Final Statement of Reasons (FSOR),¹⁷ CARB specifically addressed the interaction of a green tariff program with the LCFS program. In response to a question from 3Phases regarding the need to retire RECs under a green tariff program, CARB staff responded:

Staff would like to clarify that LCFS credits for supplying electricity are calculated based on the difference between the benchmark [carbon intensity] CI and the claimed CI of the electricity. If 1,000 MWh of electricity is claimed at zero CI under the LCFS, then 1,000 RECs would need to be retired on behalf of the LCFS to ensure that this electricity is at zero CI.¹⁸

Nowhere is there any mention that a green tariff customer would have to retire an additional 1,000 RECs to meet both the green tariff and LCFS requirements. Similarly, there is no mention of this "double retirement" obligation in the "Lookup Pathways" section of CARB regulations that are used to determine the GHG-intensity of entities using a green tariff under the LCFS program.¹⁹

¹⁷ CARB Final Statement of Reasons (FSOR) for Amendments to the Low Carbon Fuel Standard Regulation and to the Regulation on Commercialization of Alternative Diesel Fuels, November, 2019. (CARB LCFS FSOR).

¹⁸ CARB LCFS FSOR, p. 183.

¹⁹ CARB LCFS Regulations, Section 95488.8.

Most importantly, CARB itself recognized that while for green tariff programs:

Renewable energy certificates or other environmental attributes associated with the electricity, if any, are retired and not claimed under any other program with the exception of the federal RFS, and the [cap and trade] market-based compliance mechanism;

The LCFS regulation goes on to state that the:

Retirement of renewable energy credits for the purpose of demonstrating Green Tariff Shared Renewables procurement to the California Public Utilities Commission does not constitute a double claim.²⁰

THE PROPOSED REGULATIONS WOULD ESTABLISH INCONSISTENT TREATMENT BETWEEN POU GREEN TARIFF PROGRAMS AND THEIR INVESTOR-OWNED UTILITY (IOU) COUNTERPARTS

As noted above, CARB has determined that a customer's participation in both the IOU's Green Tariff Shared Renewable Program and the LCFS program does not constitute a double claim. Failing to extend similar treatment to the POU's green tariff program would result in the CEC approving inconsistent treatment between IOUs and POUs despite the CEC's oft-stated goal of comparability.²¹

This differential treatment is difficult to justify given the similarity between the two programs. The POU green tariff provisions of Section 399.30(c)(4), and the IOU's counterpart Green Tariff Shared Renewables (GTSR) program contain the identical restriction that:

Any renewable energy credits...shall be retired by the participating utility on behalf of the participating customer. Those renewable energy credits shall not be further sold, transferred, or otherwise monetized for any purpose.²²

²⁰ LCFS Regulations, Section 95488.8(i)(1)(B)(3).

²¹ Among the goals of the CEC's RPS program, according to the CEC RPS ISOR (p. 7) is to be "consistent to the extent possible with the implementation of parallel requirements for retail sellers."

²² Public Utilities Code Section 2833(s) and 399.30(c)(4).

Yet, for purposes of the LCFS program, CARB has concluded that participation in an IOU green tariff and the LCFS program does not constitute a double claim.

Similar and equivalent treatment should be extended by the CEC to POUs offering green tariff programs.

CARB'S LCFS PROGRAM IS RELYING ON THE GREEN TARIFF TO INCREASE EV AND ELECTRIC TRANSIT DEVELOPMENT TO REDUCE GHG EMISSIONS, AN OPTION THAT WOULD NOT BE AVAILABLE UNDER THE CEC'S PROPOSED AMENDED REGULATION

In 2019, CARB revised its LCFS regulations to encourage LCFS customers to use a green tariff to document that they were providing GHG-free energy for EV charging and other transportation electrification uses. This change increased by 40% the amount of LCFS credits available for green tariff participation²³ compared to using system average electric power. The CEC's definition of monetizing now negates any benefit for a LCFS customer to participate in these programs.

Previously, under CARB's pre-2019 regulations, a LCFS participant could receive additional credits for using GHG-free energy but only if the generating source was co-located with the EV charging infrastructure.

As CARB concluded in its 2019 revisions to the LCFS regulations:

We have seen very little interest in such pathways under the current rule. Staff believes that the lack of fuel pathways that combine zero carbon electricity and ZEV fueling technology is due to the small geographic footprint of ZEV infrastructure—which is often located in dense urban areas—making it difficult to co-locate renewable power generation with fueling stations.²⁴

²³ California Air Resources Board Initial Statement of Reasons for the Innovative Clean Transit Program (Appendix H – Low Carbon Fuel Standard Program and Examples.).

²⁴ California Air Resources Board Staff Report – Initial Statement of Reasons for the Public Hearing to Consider Proposed Amendments to the Low Carbon Fuel Standard Regulation and to the Regulation on Commercialization of Alternative Diesel Fuels (March 6, 2018), p. EX-5 (hereinafter CARB LCFS ISOR).

To overcome this problem, CARB looked to the green tariff to provide additional opportunities and incentives for LCFS participants to use zero-GHG energy:

Recognizing that ownership or licensing [of zero or low-CI energy resources] may be demonstrated through the use of existing green tariff programs, programs that investor owned utilities already administer in California that obtain renewable electricity beyond RPS requirements; [and]

Recognizing that Community Choice Aggregators often offer their own green tariffs with renewable content beyond RPS requirements that may be eligible for LCFS pathway approval.²⁵

As CARB noted: “The combination of renewable electricity and ZEVs offers significant opportunity for Carbon Intensity reductions”²⁶, supports other state GHG reduction efforts such as the Renewable Portfolio Standard”, and “allow[s] electric vehicles to use renewable electricity from renewable generation assets located in more efficient, practical or economical areas.”²⁷

CARB also is looking to LCFS credits as a revenue source to fund the conversion to electric power of California’s transit buses.²⁸

The CEC’s proposed regulations would now undo CARB’s entire recent initiative, as customers in a POU’s green tariff program would not be able to be used for CARB’s LCFS program participation requirements.

CONCLUSION

Public Utilities Code Section 740.12(a)(2) requires the CEC to consider how its regulatory actions to reduce GHG-emissions (such as the RPS program) help achieve California’s transportation electrification goals. The CEC should clarify in its proposed regulations that participation by a green tariff customer in CARB’s LCFS program does not represent a “monetization” of a REC in order

²⁵ The CARB LCFS ISOR p. III-96 also proposed: “Extending the eligibility for renewable generation assets to include ownership or licensing of electricity from wind and solar facilities that are not collocated with the charging station.”

²⁶ CARB LCFS ISOR, p. EX-4.

²⁷ CARB LCFS ISOR, p. III-96.

²⁸ CARB estimated that an electric bus would generate about \$10,000/year in LCFS revenues, providing about 10% of the total lifetime cost of ownership. (Attachment B, Supplemental to Economic Impact Assessment in CARB’s November 9, 2018 15-Day Comment packet for the Proposed Amendments to the Innovative Clean Transit Program.) These numbers appear conservative as they assume a LCFS credit price of \$100, about ½ of 2019 prices.

to harmonize the CEC's RPS requirements with CARB's LCFS regulations and the underlying statute.

We look forward to working with the CEC as it develops and implements its revised RPS regulations for California's publicly-owned utilities. Please feel free to contact me if necessary at jhendry@sfgwater.org or at (415) 554-1526 [office] or more quickly at (415) 867-9596 [cell].

Thank you for your consideration.

Sincerely,

JAMES HENDRY