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California Energy Commission
Docket Unit, MS-4
715 P Street
Sacramento, CA 95814

Re: Docket No. 21-OIR-01

The Alliance for Retail Energy Markets (“AReM”) appreciates the opportunity to submit comments on the Energy Commission (“CEC”) Staff’s pre-rulemaking workshop and draft regulations implementing Senate Bill 1158 (“SB 1158”).

I. The Energy Commission Should Not Apply a Total-Net Procurement Methodology for Evaluating Storage Charging.

For Stand-alone storage resources, Section 1392 (c)(5) of the Proposed Regulations would impose a “total net procurement” concept to assessing the emissions attributes of charging load and subsequent dispatch of storage resources. Load Serving Entities (“LSEs”) should be able to claim the Greenhouse Gas (“GHG”) emission attributes of excess energy beyond their hourly load without being bound to a rigid net-procurement calculation. Solar charging occurs in hours that may be associated with charging energy and later dispatch, but this charging energy may not be fully accounted for in the proposed net-procurement calculation. This creates the possibility that the net procurement calculation will assign GHG emissions to charging hours despite the fact that the LSE has procured sufficient energy on a less granular basis to cover its expected charging load during those daytime hours.

Storage should not be de-valued by applying an unspecified emission factor or other net-procurement concept where LSEs may not be able to align charging energy purchased on an annual basis with the potential for discharge. SB 1158 explicitly accounts for the possibility of aligning charging needs across multiple hours, and not by a singular, hour-by-hour net-procurement requirement. Section 398.6 of the Public Utilities Code states in relevant part that

“the energy storage facility in prior *hours* sufficient to provide the exported electricity after taking into account round-trip losses within the energy storage facility.” (emphasis added). The use of the term “hours”—plural form—makes clear that an hour-specific net-procurement requirement is inconsistent with the explicit statutory requirements of SB 1158.

The possibility of emissions from net-procurement would also conflict with competing requirements for procurement and capacity accreditation at the California Public Utilities Commission (“CPUC”). The CPUC’s mid-term reliability procurement requirements contemplate matching energy storage and zero-carbon generation on an annual basis (see the Diablo Canyon Replacement Requirement in Decision (“D.”) 21-06-035). By adopting a conflicting hourly net-procurement construct, the CEC will devalue LSEs’ investments made in response to the CPUC’s procurement orders. Moreover, in the Resource Adequacy Slice of Day framework, an LSE is allowed to match the monthly, expected energy production of generation resources in their portfolios with the expected charging need of stand-alone storage. Again, an hourly net-procurement requirement in California’s Power Source Disclosure (“PSD”) program will conflict with the less granular framework of the CPUC’s.

To remedy this conflict in law and with other regulatory programs like the CPUC’s Integrated Resource Planning (“IRP”) and Resource Adequacy (“RA”) programs, the CEC should amend proposed Section 1392(c)(5) to enable a less granular matching of charging load and specified procurement. This is consistent with Section 398.6 which requires matching with “prior hours”. While SB 1158 did not specify how many hours or over what period the charging energy should be matched, AReM encourages the CEC to interpret the statutory requirement to account for “prior hours” on an annual basis or at a minimum, over the course of a month. Put differently, the LSE’s specified procurement over the course of a calendar month (if not a year) should determine the emission factor for discharge from stand-alone storage.

II. Seller’s Choice Contracts Should Continue to be Viable and Not Require Renegotiation

Seller’s choice contracts are common commercial arrangements with larger supply-side counterparties that may have rights to varying resource types in their portfolio. Under these common arrangements the seller commits to provide a quantity of energy over a predetermined time period, allowing the seller to manage production-related risks that can arise due to facility outages or insufficient fuel (whether sunshine, wind or water). Buyers can prefer these

arrangements because it assures that the quantities contracted for are likely to be delivered under the agreed upon terms, also avoiding facility-specific performance risks.

Under seller's-choice contracts, the buyer typically has no control over the dispatch or utilization of specific resources, although it will have specified the resource type that is to provide the product (i.e., resources meeting California's Renewable Portfolio Standard ("RPS") requirements where the product is a bundled or unbundled Renewable Energy Credits ("REC")). Insofar as the typical seller's choice contracts do not dictate which resources are to provide the product in any given hours, nothing would preclude the seller from intentionally or unintentionally providing the buyer the "worst" hours from a PSD hourly emissions calculation perspective (say solar in the middle of the day) so long as it met the total volume of product required under the contract. The current PSD proposal undermines the risk-mitigating value of these forms of contract and may have the unintended effect of limiting these types of contracts in the future (with likely cost increases to customers), as buyers would seek greater certainty for the exact hours products are assigned. Such an effect will insert additional counter-party risks (with associated premiums) for both parties in terms of satisfying product volumes. While it is unclear how such a rule will ultimately impact the market, sellers losing flexibility can likely demand a higher price for specific resources or hours.

We note an added nuance: the Public Utilities Commission Resource Adequacy program's implementation of the Slice of Day proposal explicitly stated that LSEs cannot transact individual hours of resource adequacy capacity.¹ This then implicates situations where an RA resource's energy is to be sold as a product separately from the RA capacity values—something common in the market today.

III. The Power Source Disclosure Regulations Should Clarify How Hourly Shares of Resources Are Shared Among Multiple Purchasers of a Common Resource.

The proposed PSD Regulations revisions fail to contemplate an extremely common contract structure where an asset owner sells their resource's products to multiple offtakers. Such contract structures are commonplace in the California Independent System Operator

¹ CPUC Decision 22-06-050, § 4.6.10, at 97.

(“CAISO”) footprint.² In the particular case of RPS contracts, power products are often purchased as a set quantity of Megawatt hours (“MWhs”) over a broad period of time, with multiple off-takers receiving power from the same specified source during that delivery period. The CEC should clarify how hourly shares of resources will be allocated among purchasers of the same resource. The CEC should account for the fact that there will likely be a considerable amount of power under contract after the first reporting period in 2027 where sellers have not been able to update contracts to account for hour-by-hour allocations among multiple off-takers. To avoid conflicts with existing contractual arrangements, contracts should be grandfathered such that LSEs are able to rely on contracts executed prior to the new regulations’ effective date to show that the LSE purchased a particular quantity (similar to the existing RPS check-out process) and the CEC would allow allocation of that generation source across multiple sellers without limiting the total verified generation and the aggregate load of the purchasing LSEs. In other words, for pre-July 1, 2024 contracts, the CEC should not create a limit in the new Snowflake system that restricts load matching among multiple off-takers, and aggregate load among multiple off-takers should be allowed to exceed hourly generation from the resource.

IV. The Snowflake Database Should Ensure Confidentiality of Protected Information.

Hourly generation and load data directly relates to market participation, and as such is considered confidential business data. It is possible to deduce confidential business strategies from hourly data. This is a central reason much of the load and supply data made public by the CAISO masks the identity of sellers and buyers.

The need for confidentiality is explicitly recognized and required by SB 1158. Section 398.6(f) requires the CEC “to protect the confidentiality of market sensitive data...” As the CEC designs the portal and database system, in particular any user-access interfaces and data that can be viewed by any other reporting entity or a member of the general public, the CEC should ensure that it does not inadvertently disclose market sensitive data. For example, the CEC should not enable reporting entities to learn the identity of other buyer’s hourly shares of a resource. Likewise, if a reporting entity does not have a contract with a particular resource, it

² On October 20, 2023, the Daggett Solar + Storage project, California’s largest hybrid solar and battery storage facility, announced sales to six California LSEs. See <https://www.power-eng.com/news/californias-biggest-solarstorage-facility-powers-up/>

should not be able to view the bidding and dispatch data of a specified resource. The CAISO has considerable experience in managing confidentiality protections of the market and should be closely consulted in the design and user-interfaces of the Data Submission Portal and Snowflake database.

V. **The CEC Should Provide Clear Verification Guidelines to Auditors Responsible for the Annual Audit of the PSD Report.**

The proposed PSD reporting requirements will undoubtedly be more complex than the existing program. AReM is concerned that auditors and verifiers of annual PSD report may not share a common understanding of how the report is structured and what steps are associated with a proper verification. We encourage the CEC to develop detailed verification guidelines that specify how verifiers should review and check data inputs for the PSD report using examples from common contract approaches for the products traded in California's energy and capacity markets. CARB's Mandatory Reporting Regulation guidance to verifiers for electric power entities is a good example of the level of detailed guidance verifiers should receive from the CEC as part of these proposed regulations' implementation. Developing detailed guidance will facilitate timely compliance and a smoother verification process.

AReM thanks the Commission for the opportunity to provide its comments during the pre-Rulemaking process and anticipates continued participation in the development of the PSD program.

Dated: October 24, 2023

Respectfully submitted,



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