



March 6, 2020

Rajinder Sahota
Carey Bylin
Industrial Strategies Division
Clerk's Office, California Air Resources Board
1001 "I" Street
Sacramento, CA 95814

Re: Support for Proposed Modification to the Fuel Cell Net Energy Metering Greenhouse Gas Emission Standards Proposed Regulation Order

Dear Ms. Sahota and Ms. Bylin,

Earthjustice, Sierra Club and the Natural Resources Defense Council appreciate this opportunity to comment on the February 10, 2020 proposed modifications to the fuel cell net energy metering greenhouse gas standard ("FCNEM GHG Standard"). Throughout the long process of developing a standard, we have raised concerns that the underlying methodology failed to fully account for the GHG impacts of fuel cells and would result in the substantial public subsidy of inefficient and GHG-intensive fuel cell projects. We also noted that the proposed standard was weaker than an analogous standard¹ adopted by the California Public Utilities Commission ("CPUC") in 2015 despite the increased ambition of California's GHG reduction requirements and severity of the climate crisis. In response to these concerns, the Board directed Staff at the December 12, 2019 Board Meeting to determine if additional modifications to the

¹ There was some confusion at the December 12, 2019 Board hearing regarding whether the GHG threshold developed by the CPUC for SGIP was based on an average or marginal emissions rate. To clarify, the GHG threshold adopted by the CPUC looked at the displacement of marginal grid resources as well as the impact of avoided renewable procurement from additional behind-the-meter generation. See Decision 15-11-027, *Decision Revising the Greenhouse Gas Emission Factor to Determine Eligibility to Participate in the Self-Generation Incentive Program Pursuant to Public Utilities Code Section 379.6(b)(2) as Amended by Senate Bill 861, Rulemaking 12-11-005*, at Appendix B (Nov. 19, 2015), <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M156/K044/156044151.PDF>. This is identical to ARB's statutory mandate to develop a GHG threshold that accounts for "procurement and operation of the electric grid." Compare Pub. Util. Code, § 2827.10(b)(2) (FC GHG standard established by ARB "reduces greenhouse gas emissions compared to the electrical grid resources, including renewable resources, that the fuel cell electrical generation resource displaces, *accounting for both procurement and operation of the electric grid*") (emphasis added) with Public Utilities Code Section 379.6(b)(2). Accordingly, the fact that the CPUC's GHG 2017 threshold is substantially more stringent than the 2017 GHG standard proposed by ARB Staff was relevant to the Board's consideration.

proposed standard were appropriate.² In response to Board direction, Staff proposed a steeper annual decline to the FCNEM GHG Standard to align with California’s 2030 statewide GHG limit enacted in Senate Bill 32 (Pavley, Chapter 249, Statutes of 2016). Earthjustice, Sierra Club and NRDC support this change and urge its adoption without further modification.

In comments on Staff’s proposed modifications, Bloom Energy argues for the first time that ARB should permit biomethane contracted under Section 95852.2 of the Cap-and-Trade Program to reduce the claimed GHG pollution from FCNEM projects for the purposes of determining compliance with the FCNEM GHG Standard. CARB must reject this proposal. Compliance with the FCNEM GHG Standard is squarely within the responsibility of the CPUC, not CARB, and is therefore a question for the CPUC to resolve as part of its NEM implementation proceeding. Indeed, the CPUC has identified serious concerns with the environmental integrity of directed biogas projects under the Self-Generation Incentive Program (“SGIP”) and has suspended these projects from SGIP participation until these concerns are resolved.³ It would not be appropriate for CARB to import a regulation under one statutory regime into another particularly where, as here, these are matters of CPUC jurisdiction.

Thank you for considering these comments.

Respectfully,

Matthew Vespa
Staff Attorney
Earthjustice
50 California Street, Suite 500
San Francisco, CA 94111
Telephone: (415) 217-2123
Email: mvespa@earthjustice.org

Alison Seel
Associate Attorney
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
Telephone: (415) 977-5737
Email: alison.seel@sierraclub.org

Alex Jackson
Senior Attorney
Natural Resources Defense Council
111 Sutter Street, 21st Floor
San Francisco, CA
Telephone: (415) 875-6100
Email: ajackson@nrdc.org

² CARB Resolution 19-35 (Dec. 12, 2019).

³ CPUC, D.20-01-021, *Self-Generation Incentive Program Revisions Pursuant to Senate Bill 700 and Other Program Changes* at 69 (Jan. 27, 2020), <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M325/K979/325979689.PDF>.