

REQUEST FOR EARLY EFFECTIVE DATE

The California Air Resources Board (CARB or Board) formally requests, under Government Code section 11343.4(b), that the Office of Administrative Law (OAL) prescribe an "earlier effective date" for the Fuel Cell Net Energy Metering Greenhouse Gas Emission Standards Regulation (Regulation), title 17, California Code of Regulations, sections 95408, 95409, 95410, 95411, and 95412. Specifically, CARB requests that the Regulation become effective upon filing with the Secretary of State. The Board approved the adoption of the Regulation at its hearing on December 12, 2019 (Resolution 19-36). The following demonstrates good cause for OAL to allow the Regulation to be effective on the date requested.

DEMONSTRATION OF GOOD CAUSE

In this rulemaking, the Board considered and adopted a regulation, as required by Assembly Bill (AB) 1637 (Low, Chapter 658, Statutes of 2016), establishing greenhouse gas emissions standards for fuel cells to qualify for an ongoing voluntary tariff (bill credit) program. The Fuel Cell Net Energy Metering (Fuel Cell NEM) Program, established by the Legislature in 2003, provides eligible customer-generators with a bill credit for electricity generated and exported from a fuel cell system and avoids or limits the amount that fuel cell customer-generators ordinarily pay for various utility costs. The Program is overseen by the California Public Utilities Commission (CPUC).


In addition to extending the Fuel Cell NEM Program, AB 1637 also added the requirement that CARB develop greenhouse gas emission standards that fuel cell electrical generation resources must meet in order to be eligible for the Program. Accordingly, the Regulation establishes a schedule of annual greenhouse gas emission standards, to be updated every three years, pursuant to statutory requirements. By statute, CARB's only role in the Fuel Cell NEM Program is to establish and update the greenhouse gas emission standards (Public Utilities Code sec. 2827.10). Once the Regulation containing the standards is effective, statute requires CPUC to determine which fuel cell technologies comply with the additional standards, and therefore will continue to qualify for the Fuel Cell NEM Program (*ibid.*). To do so, CPUC must make a variety of technical and policy decisions informed by a public process, which CPUC has determined it cannot begin until CARB's regulation is effective.

The requested early effective date, upon filing with the Secretary of State, would allow CPUC to begin, and therefore complete, its process more expeditiously. Until the CPUC's process is completed, those that own or are considering installing fuel cell electrical generation resources will be subject to uncertainty with respect to whether the fuel cell resources will meet the new greenhouse gas standards. As California sees high electricity demand, weather-related electricity disruptions, and Public Safety Power

REQUEST FOR AN EARLIER EFFECTIVE DATE
FUEL CELL NET ENERGY METERING GREENHOUSE GAS EMISSION STANDARDS
REGULATION

Shutoff events, the installation of distributed generation resources, such as fuel cells, can strengthen the reliability of the electricity system by providing alternative sources of power that reduce demand on the electrical grid. Additionally, fuel cell projects can have long lead times. As such, it is important that CPUC be able to implement the new greenhouse gas standards and provide this certainty as soon as possible. Because the regulation solely establishes a standard for a program implemented by CPUC, and does not directly affect any rights, benefits, or duties, an earlier effective date would not restrict notice or impose a burden on any person or entity.

For the foregoing reasons, CARB hereby requests that OAL approve these amendments to be effective upon filing with the Secretary of State.



Sept. 10, 2020

Jessica Gordon
Senior Attorney
California Air Resources Board

Date