MCE Clean Energy
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Marin Clean Energy
1125 Tamalpais Avenue
San Rafael, CA 94901

1 (888) 632-3674
mceCleanEnergy.org

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California Energy Commission
Dockets Office, MS-4
Re: Docket No. 14-OIR-01
1516 Ninth Street
Sacramento, CA 95814-5512
via email docket@energy.ca.gov

Re: Docket. 14-OIR-01. Marin Clean Energy's Comments on Rulemaking to Consider Modifications to the Electricity Generation Source Disclosure Regulations and Pre-Rulemaking Draft Regulations to the Power Source Disclosure Program

Marin Clean Energy (MCE), a joint powers agency which administers California's first operating community choice aggregation (CCA) program began serving retail generation customers on May 7, 2010. Since that time, MCE has significantly expanded with current membership including: City of Belvedere, City of Benicia, Town of Corte Madera, City of El Cerrito, Town of Fairfax, City of Larkspur, City of Mill Valley, County of Marin, County of Napa, City of Novato, City of Richmond, Town of Ross, Town of San Anselmo, City of San Pablo, City of San Rafael, City of Sausalito, Town of Tiburon. MCE now serves approximately 170,000 customer accounts.

Electricity customers within these member communities are presently able to choose between four retail generation service options, including: 1) MCE Light Green service, which includes a minimum 50 percent renewable energy supply; 2) MCE Deep Green service, a voluntary service election which provides participating customers with 100 percent renewable energy supply; 3) MCE Local Sol, another voluntary service election which will provide participating customers with 100 percent locally produced photovoltaic solar electricity, beginning in late 2015; and 4) generation service provided by Pacific Gas & Electric Company (PG&E), the incumbent investor-owned utility (IOU). The availability of these choices is fundamental to MCE's business model, as well as the CCA service model generally, providing residential and business customers within MCE's member communities with a variety of electric service options that are responsive to a broad range of customer preferences and priorities. Furthermore, customers may readily choose to move from MCE to PG&E service, "opting-out" of the CCA program, subject to applicable terms and conditions.

As a retail supplier of electricity in California, MCE has participated in California's Power Source Disclosure Program (PSDP) since its inception, timely

submitting requisite annual reports, including the distribution of an annual Power Content Label (PCL) to participating customers. The form and information reflected in the PCL has been very helpful in communicating with customers regarding the various fuel sources from which MCE serves the retail electricity requirements of its customers. In fact, the simplicity of the PCL in its current form has been one of the more effective sources of information used in discussing MCE's supply portfolio and the various, diverse fuel sources that have been incorporated therein.

Based on MCE's recent review of the California Energy Commission's (CEC or Commission) Power Source Disclosure Program Pre-Rulemaking Draft Regulations (Draft Regulations), there appear to be certain proposed changes to the PCL that are highly concerning and have no clear rationale. In particular, MCE is unclear with regard to the legal or practical basis for making proposed changes to the PCL, particularly the addition of a "REC Only" line item, which seems awkward and out of place relative to other fuel source-specific information presented in the label, as well as the related footnote, which includes inaccurate information regarding renewable energy certificates. As articulated in the California Public Utilities Code (Code), the impetus for requiring a PCL is as follows, "The Legislature finds and declares that there is a need for reliable, accurate, and timely information regarding fuel sources for electric generation offered for retail sale in California."[1] While the Code certainly includes the use of other similar terms characterizing the nature of various energy purchases/deliveries, use of the term "fuel sources" when introducing the need for a customer-focused PCL strikes MCE as deliberate and specific with regard to the information that is to be included in the label.

With regard to the Draft Regulations, MCE respectfully submits the following written comments, which primarily focus on: 1) the basis for the proposed changes to the PCL; 2) the proposed addition of the "REC Only" line item and related footnote to the PCL; and 3) general support for disparate audit/attestation processes applying to public agencies.

I. The proposed changes to the Power Content Label are unnecessary.

According to the Abstract included in the Draft Regulations, "The proposed amendments to the California Energy Commission regulations will ensure compliance with existing law. Although most of the proposed changes to the existing power source disclosure regulations are the direct result of the AB 162 requirements, proposed amendments to Commission regulations also include changes to improve Commission practice and implementation of the original statute."[2] Based on MCE's review, AB 162 (2009)[3] does not appear to require distinctions to be made within the PCL regarding the procurement of "REC Only" products, nor does AB 162 make reference to the terms Renewable Energy Credit (REC), REC Only, or unbundled REC. Furthermore, it is entirely unclear to MCE how the proposed changes to the PCL will "improve Commission practice and implementation of the original statute." Again, MCE has reviewed AB 162 and has contemplated potential improvements that would or could be achieved as the result of proposed changes to the PCL. Respectfully, MCE is not able to identify any measurable improvements to Commission practices that would be directly associated with proposed PCL changes, particularly the addition of a "REC Only" line item and related footnote. To the contrary, MCE strongly believes that the proposed PCL changes are both unnecessary, ineffective and without basis.

MCE reviewed the Draft Regulations, the related Order Instituting Rulemaking, the recent Workshop Notice and other posted materials on the Commission's PSDP webpage(s) and found no

[1] California Public Utilities Code, Section 398.1.(a).
[2] Chou, Kevin. 2015. ***Power Source Disclosure Program Pre-Rulemaking Draft Regulations***. California Energy Commission, Renewable Energy Division. CEC-300-2015-004-SD. Page iii.
[3] Assembly Bill 162, Ruskin, Chapter 313, Statutes of 2009.

specific references or discussion which indicated that the proposed PCL changes are necessary or required. MCE also failed to see any discussion regarding the Commission's process for determining how such changes would improve Commission practice and implementation of the original statute. MCE requests that the Commission make available to interested stakeholders a more detailed description of its rationale for determining the scope of changes to be included in the PCL, including specific references to the legal requirements related to such changes. MCE also requests a similar description focused on the association between the proposed PCL changes and prospective improvements to Commission practices and statutory implementation. Again, neither of these descriptions appear to be available at the present time, and it seems appropriate to provide such information to interested stakeholders as part of any process that may result in modifications to the PSDP program generally or the PCL specifically.

II. Highlighting "REC Only" products, as opposed to other products or product attributes, within the Power Content Label is arbitrary and provides no benefit to the consumer.

As previously noted, the Code states: "The Legislature finds and declares that there is a need for reliable, accurate, and timely information regarding fuel sources for electric generation offered for retail sale in California."[4] This excerpt is clearly focused on the impetus for the PCL and directly associates the Legislature's interest in requiring such a communication/disclosure with the need for information regarding the fuel sources underlying the electricity supply delivered to California consumers. The current PCL format is very effective in achieving the Legislature's will, providing concise statistics related to the fuel sources associated with each retail supplier's power portfolio without unnecessarily confusing consumers with additional detail regarding the underlying product specifications or contract provisions associated with such purchases, including product type or delivery profile (*e.g.* bundled vs. unbundled, firmed/shaped, as-available vs. firm, *etc.*), energy delivery point, geographic location, or even price, amongst other specifications. Including the technical details associated with energy deliveries captured in the PCL would be impractical and unnecessarily confusing to consumers, requiring numerous pages and clarifying footnotes to sufficiently describe this additional information. Most customers understand the terms currently included on the PCL such as 'solar', 'wind', 'coal' and 'natural gas'. To introduce the new term, "REC Only" while adhering to the "reliable and accurate" requirements of Code would require an explanation about what a REC is (*i.e.* that a REC is a certificate of proof that one unit of electricity was generated and delivered by an eligible renewable energy resource), and what a REC is used for (*i.e.* RECs are tracked via WREGIS to ensure proper accounting for renewable electricity generated, purchased and retired and RECs include all renewable and environmental attributes associated with the production of that electricity).

There are literally dozens of pieces of additional information that could be provided via the PCL to California consumers, but there appears to be little value, and likely considerable confusion, in providing such information. More pertinently, however, the aforementioned additional information is not required by law or practical necessity. This observation applies directly to the "REC Only" product attribute as well, which appears to be arbitrarily and unnecessarily included in the Commission's proposed changes to the PCL. It is important to note that inclusion of the "REC Only" category would likely result in competitive advantages for older retail suppliers, such as PG&E, which made significant forward renewable energy purchases prior to the passage of SB 2 1X in 2011 – these renewable energy purchases are generally referred to as "grandfathered" products. Such purchases pre-date the product definitions that were created under the currently effective RPS rules, which establish clearer distinctions between various eligible renewable energy products (*e.g.* Bucket 1, Bucket 2 and Bucket 3), imposing stricter delivery and tagging requirements for "bundled" renewable energy products relative to the pre-

[4] P.V. Code 398.1 (a)

2011 RPS program. Again, significant use of grandfathered renewable energy purchases may create competitive inequities to the extent that such products generally resemble unbundled renewable energy purchases yet receive similar treatment to bundled renewable energy purchases in the proposed PCL format. To ensure 'reliable and accurate' customer disclosures, these pre-2011 renewable purchases would need to be re-examined and accurately classified in a manner that more fairly represents the underlying product attributes associated with such purchases.

It is concerning to MCE that this specific product attribute, "REC Only," has been proposed for inclusion in the PCL. As the proposed changes to the PCL, which do not appear to be required by law, may circumvent due process required to enact such changes. Because MCE (and other stakeholders) have limited information with regard to the Commission's basis for proposing to include this information, it is difficult to determine why this particular addition, amongst the myriad of potential additions to the PCL, is necessary and appropriate at this point in time. It also strikes MCE that other information, such as the various locations of generators underlying supply reflected in the PCL, may be equally interesting to California consumers, yet a recent attempt by a California legislator to reflect such changes in the power disclosure process was unsupported.[5]

III. The proposed "REC Only" line item and associated footnote in the PCL are potentially misleading and reflect informational inaccuracies.

Clearly, use of unbundled RECs is allowed under California's Renewables Portfolio Standard and unbundled RECs are also widely used throughout California's electric utility industry to support green pricing programs and other service offerings promoting increased use of renewable energy. As part of its various program development efforts, MCE has spent considerable time and resources researching information related to unbundled REC use, including identification of support for the use of such products by a broad range of stakeholders and oversight agencies, including the U.S. Environmental Protection Agency (U.S. EPA), the Center for Resource Solutions (which administers the Green-e Energy program) and various other organizations. In fact, the U.S. EPA notes that, "RECs and utility green power are fundamentally equivalent environmental products."[6] This quote seems to use the term "RECs" in place of "unbundled RECs" and "utility green power" in place of "bundled renewable energy" – based on MCE's experience there are a variety of terms within the electric utility industry that are used interchangeably to describe specific renewable energy products that are procured/delivered by buyers and sellers. Simply put, both products – bundled and unbundled renewable energy – have considerable value and, according to EPA, there is fundamentally no distinction between these products with regard to the associated environmental attributes.

Based on MCE's research, there appears to be compelling evidence that unbundled RECs play an important role in advancing the development of increased renewable energy resources and associated environmental benefits, so it is unclear to MCE why this particular product attribute is being highlighted and other important product attributes (such as the locations of various generating resources contributing to a retail sellers power supply) are not. The mere inclusion of a "REC Only" line item may mislead the reader of the PCL, suggesting that there is something noteworthy or important regarding the "REC Only" product attribute relative to other product attributes that are not addressed in the PCL. Unfortunately, the reflection of this information in the PCL seems to represent the manifestation of an unresolved

[5] Senate Bill 456 (2014), focused on reformed power source disclosure, was not supported by the California Senate.
[6] U.S. Environmental Protection Agency. ***The Environmental Value of Purchasing RECs (EPA Report)***. October 2010.

philosophical debate regarding the relative value of bundled renewable energy purchases and "REC Only" transactions, which may inappropriately influence the reader's perception of unbundled RECs and the relative value of such products. It strikes MCE that it is far more valuable and accurate to omit the "REC Only" line item and address known product distinctions through the addition of a general footnote tied to the "Eligible Renewable" subheading. Suggested verbiage for this footnote could read:

> "Eligible Renewable energy may be procured from a variety of fuel sources, geographic locations and product types, including renewable energy that is delivered with or apart from the associated environmental attributes. The specific proportion of such products may vary based on the procurement and planning activities undertaken by different retail sellers throughout California."

Such a footnote is both technically accurate and informative to the consumer in the sense that it broadly highlights known differences in renewable energy products without unnecessarily focusing on any particular product attribute, which may mislead or "steer" the consumer's interpretation of product value or importance.

With regard to the proposed footnote related to the "REC Only" line item, the information is technically inaccurate. As drafted, the footnote reads, "The REC Only energy resource refers to Renewable Energy Credits that were purchased by a retail seller and does not represent actual generated electricity."[7] However, within the definitions section of the Draft Regulations, "REC Only" is defined in the following manner: "As specified in Section 399.12, Subdivision (h)(2), a Renewable Energy Certificate (REC) includes all renewable and environmental attributes associated with the production of electricity from an eligible renewable energy resource[…]"[8] Within the electric utility industry, it is well understood that a specific quantity of RECs cannot be generated without an equivalent, verifiable quantity of metered renewable electricity being produced. The definition of "REC Only" seems to conform with this understanding, noting that a REC is generally associated with the "production of electricity from an eligible generator." However, the footnote erroneously and inconsistently indicates that a REC "does not represent actual generated electricity." This is false, and MCE recommends omitting this technically inaccurate footnote as well as the REC Only line item itself and replacing these proposed changes with the addition of a general footnote, as previously recommended, tied to the Eligible Renewable subheading designed to inform the reader regarding the broad range of product attributes that are typically associated with renewable energy purchases.

IV. MCE supports the preservation of a public agency's ability to self-attest to the veracity of the annual report.

Within the Draft Regulations MCE observed that, "A retail supplier that is a public agency providing electric services is not required to comply with the provisions of subdivision (b)(1) if the board of directors of the public agency approves at a public meeting the submission to the Energy Commission of an attestation of the veracity of the annual report."[9] MCE strongly supports the treatment of public agencies and other retail sellers in this regard, as public agencies are primarily compelled to conduct pertinent business activities through duly noticed public meetings, including power resources planning and contracting activities directly related to the annual report. Public agencies are also compelled to respond to certain information requests, producing information directly related to power contracts and

[7] *Ibid*. Pages A-5, A-7 and A-9.
[8] *Ibid*. Page 2.
[9] *Ibid*. Pages 21 and 22.

related deliveries. Typically, MCE's power contracts are disclosed in public meeting materials and are generally discussed with MCE's governing board prior to approval. MCE also undergoes a publicly administered annual resource planning process through which MCE discloses detailed information regarding past and planned procurement activities related to its power supply portfolio. The investor-owned utilities and energy services providers do not typically participate in similar publicly administered processes related to power resources planning and procurement (particularly with regard to the level of detail and documentation disclosed in such processes), so it seems appropriate for such organizations to engage third-party auditors for the purpose of ensuring that related information is accurately accounted for and communicated to the public through the annual report.

V. Conclusions and Recommendations of MCE.

Clearly and effectively communicating with California consumers is not without challenges. There is certainly tension between the often competing objectives of increased information/disclosure and general efficiency, particularly in a technically nuanced field such as the electric utility industry. Inevitably, there must be compromises with regard to informational simplicity and technical detail when disclosing statistics related to retail electricity supply. The current PCL form is effective in this regard, striking an appropriate balance with respect to the aforementioned considerations. MCE also believes that changes to the PCL are not required by law, nor are they administratively necessary at this point in time. In particular, the proposed addition of a "REC Only" line item, focusing on the proportion of unbundled renewable energy certificates delivered by a retail seller to its customers, is arbitrary, unnecessary and potentially confusing to California consumers.

If the Commission believes that additional detail related to the nature of renewable energy products is important and would be beneficial to California consumers, such information could be more effectively addressed through the addition of a broad footnote designed to disclose general information regarding inevitable differences between the renewable energy supply portfolios of California's retail electricity sellers. This approach would promote competitive neutrality without confusing the reader with additional information that is not required by law. The Commission is likely aware of the longstanding conflict that exists between MCE and PG&E with regard to the presentation and comparison of certain power supply statistics, specifically the use of unbundled renewable energy certificates, and MCE urges the Commission to remain cognizant of the potential competitive impacts (to both MCE and CCAs generally) that may stem from proposed changes to the PCL – the PCL should remain neutral in this regard; the current form of the PCL is satisfactory without modification.

MCE appreciates the opportunity to provide its comments on the Draft Regulations and thanks the Commission for considering the information and recommendations reflected herein.

Sincerely,

/s/ JEREMY WAEN

Jeremy Waen
MCE Senior Regulatory Analyst