DOCKETED	
Docket Number:	21-OIR-01
Project Title:	Rulemaking to Amend Regulations Governing the Power Source Disclosure Program
TN #:	252724
Document Title:	California Municipal Utilities Association Comments - on Pre-Rulemaking Proposed Updates to the Power Source Disclosure Regulations
Description:	N/A
Filer:	System
Organization:	California Municipal Utilities Association
Submitter Role:	Public
Submission Date:	10/24/2023 6:20:10 PM
Docketed Date:	10/25/2023

Comment Received From: California Municipal Utilities Association
Submitted On: 10/24/2023
Docket Number: 21-OIR-01

on Pre-Rulemaking Proposed Updates to the Power Source Disclosure Regulations

Additional submitted attachment is included below.

October 24, 2023

California Energy Commission
Docket Unit, MS-4
Re: Docket No. 21-OIR-01
715 P Street
Sacramento, CA 95814-5512

RE: California Municipal Utilities Association Comments on Pre-Rulemaking Proposed Updates to the Power Source Disclosure Regulations [CEC Docket No. 21-OIR-01]

Dear Commission Staff,

The California Municipal Utilities Association ("CMUA") respectfully submits these comments on the *Staff Pre-Rulemaking Workshop on Updates to the Power Source Disclosure Regulations* ("Workshop"), held on September 26, 2023, the *Pre-Rulemaking Amendments to the Power Source Disclosure Program* ("Proposed Updates"), issued on September 20, 2023, and the *Staff Report, Power Source Disclosure Proposals on Hourly and Annual Accounting* ("Staff Report"), issued on September 20, 2023.

I. INTRODUCTION

CMUA greatly appreciates the Commission and staff's efforts in developing the Proposed Updates and continuing to seek input from stakeholders on implementing Senate Bill ("SB") 1158 (stats. 2022, Ch. 367, Becker) and making updates to the annual power source disclosure ("PSD") reporting requirements. The implementation of SB 1158 presents unique challenges due to the complexity and scale of the new data being collected and reported. Further, SB 1158 creates a new environmental attribute for all generation: hourly greenhouse gas ("GHG") emissions intensity. These regulations will therefore impact existing contracts and may have direct impacts on California's energy markets. CMUA strongly encourages the Commission to continue its outreach to stakeholders, hold additional workshops, and proactively address identified challenges before proceeding to the formal regulatory process.

As the Commission evaluates the Proposed Updates and considers additional modifications, CMUA urges the Commission to be guided by the intent of the relevant legislation and by the rules of statutory construction. Pursuant to the rules of statutory construction, the Commission must implement SB 1158 and make any changes to the annual PSD requirements in a manner that gives a reasonable and commonsense interpretation that is consistent with the Legislature's purpose.[1] This implementation should be practical rather than overly technical and should seek to harmonize individual provisions with the overall statutory structure.[2] As discussed further below, SB 1158 intended to increase the transparency and accuracy of GHG emissions reporting on an hourly basis, and, in particular, to more accurately attribute emissions associated with unspecified purchases. Further, the annual PSD program is intended to provide "reliable, accurate, timely, and consistent information regarding fuel sources for electric generation offered for retail sale in California."[3]

II. COMMENTS ON THE PROPOSED UPDATES

A. Annual Accounting and Power Content Label

Separate from the implementation of SB 1158, the Proposed Updates would also make changes to the existing annual PSD reporting requirements by adding new categories of reporting and requiring retail suppliers to provide their customers with an expanded power content label ("PCL"). Specifically, retail suppliers would need to issue PCLs that include the fuel mix and GHG emissions intensity for two additional columns: (1) a column for the retail supplier's "other electricity uses," which includes self-consumption, municipal uses, and losses, and (2) a column representing "total power," which would include all retail sales plus other electricity uses. These proposed changes do not align with the statutory requirement that the PCL reflect generation offered to serve *retail sales*.

Ensuring that data about utility generation sources and the associated GHG emissions is readily available and transparent is an important step in meeting California's environmental goals. However, the Commission must balance the benefits of providing more information against the high likelihood of causing greater customer confusion. When implementing a statute, the Commission should first be guided by the plain language and where an ambiguity in the meaning of the language exists, the Commission must ensure that the regulations are consistent with the legislative intent.

In the case of the PCL, the Legislature has carefully and narrowly specified the applicable requirements. Public Utilities Code section 398.4(d) specifies that the disclosures in the PCL must be "made separately for each portfolio offering made by the retail supplier." Public Utilities Code section 398.4(g) goes on to specify the requirements for disclosing the fuel mix of the customer's portfolio offering. Public Utilities Code section 398.4(k)(1) provides the parallel requirements for the GHG emission intensity:

> (1) Each retail supplier shall disclose both the greenhouse gas emissions intensity of any electricity portfolio **offered to its retail customers** and the Energy Commission's calculation of greenhouse gas emissions intensity associated with

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[1] Hubbard v. California Coastal Com. (2019) 38 Cal.App.5th 119, 135–136 [250 Cal.Rptr.3d 397, 409] (emphasis added), citing *Pasadena Metro Blue Line Construction Authority v. Pacific Bell Telephone Co.* (2006) 140 Cal.App.4th 658, 663–664, 44 Cal.Rptr.3d 556 (*Pasadena Metro Blue Line*) and *20th Century Ins. Co. v. Superior Court* (2001) 90 Cal.App.4th 1247, 1275, 109 Cal.Rptr.2d 611.

[2] *Id.*

[3] Cal. Pub. Util. Code § 398.1(a).

> all **statewide retail electricity sales**, consistent with the requirements of this subdivision.[4]

Further, the Legislature expressly declared the purpose of the PSD program in Public Utilities Code section 398.1:

> (a) The Legislature finds and declares that there is a need for reliable, accurate, timely, and consistent information regarding fuel sources for electric generation offered for retail sale in California.
>
> (b) The purpose of this article is to establish a program under which entities offering electric services in California disclose accurate, reliable, and simple to understand information on the sources of energy, and the associated emissions of greenhouse gases, that are used to provide electric services.

As specified in this code section, the purpose of the PSD program is to disclose information about generation offered for "retail sale" in a format that is "accurate, reliable, and ***simple to understand***."[5]

Nothing in the express statutory language of Public Utilities Code section 398.4 gives the Commission the authority to require retail sellers to disclose information about generation not offered to serve retail sales. Moreover, requiring retail sellers to report various other types of end uses my lead to greater confusion, particularly as currently included in the Proposed Updates, which includes complex issues like line losses and self-consumption. Further, self-consumption, losses, and municipal uses are handled in a variety of different ways depending on factors such as policies adopted by the governing boards and the underlying utility contracts. This lack of uniformity makes it less likely that a standardized approach will provide meaningful information to customers.

Additionally, the Commission recently considered these same questions in the rulemaking implementing Assembly Bill ("AB") 1110. In the Final Statement of Reasons ("FSOR") for the Modification of Power Source Disclosure Program, in Docket No. 16-OIR-05, issued on May 8, 2020, the Commission responded to various stakeholder comments urging the Commission to include line losses and total procurement in the PCL. The Commission responded as follows:

> **COMMENT NO. 21A4, 21C3, 21B3, 21D3**: The commenter urged the CEC to include transmission and distribution losses in the GHG emissions intensity calculations. Doing otherwise, the commenter noted, would underreport GHG emissions.
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> **COMMENT NO. 33B19**: The commenter requested clarification on whether a net purchase of, for example, 1.2 kilowatts factors in all the costs and line losses that entail delivery of 1 kilowatt.

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[4] Cal. Pub. Util. Code § 398.1(k)(1) (emphasis added).
[5] Cal. Pub. Util. Code § 398.1(b) (emphasis added).

RESPONSE: No change to the regulations. Public Utilities Code section 398.4(k)(1) establishes electricity associated with retail sales as the denominator in the calculation of the GHG emissions intensity of an electricity portfolio. Grid losses are not included in retail sales, so GHG emissions associated with grid losses are not included in the GHG emissions intensity associated with electricity associated with retail sales.

. . .

COMMENT NO. 33C7: The commenter urged the CEC to collect the raw procurement data for each electricity product in a retail supplier's electricity portfolio in order to ensure grid losses do not go ignored in subsequent GHG emissions calculations.

RESPONSE: No change to the regulations. These regulations already require retail suppliers to report total specified procurement. However, grid losses are not included in retail sales, so GHG emissions associated with grid losses are not included in the GHG emissions intensity associated with electricity associated with retail sales.[6]

Thus, as the Commission recently confirmed, the basis of the content of the PCL is retail sales and the statute does not authorize expanded reporting in this context. Further, SB 1158 did not change this. The Commission should limit the content of the PCL to the categories specified in statute, consistent with the express intent of the authorizing legislation.

B. SB 1158

1. *Implementation of Hourly Accounting Rules*

One of the core implementation challenges of SB 1158 is determining how to attribute GHG emissions that are associated with a retail supplier's specified procurement in excess of loss adjusted load (oversupply). The Commission must ensure that its implementation of this hourly accounting is (1) consistent with and authorized by the enabling statute, (2) carries out the legislative intent, and (3) supports California's environmental goals and reliability needs. To meet these goals, the hourly accounting structure must not unfairly attribute GHG emissions to a retail supplier that has procured sufficient renewable and zero carbon resources to meet its customer's load in that hour. Similarly, these regulations must not create a disincentive for retail suppliers to offer to run generating resources that are needed by the grid for reliability purposes.

In the Proposed Updates, a retail supplier will be allocated ***all*** GHG emissions associated with all specified purchases during each hour, even if the GHG emissions are associated with generation in excess of the retail supplier's loss adjusted load. This approach is (i) inconsistent with the plain statutory language and legislative intent, (ii) creates incentives counter to both California's environmental goals and reliability needs, and (iii) unfairly allocates GHG emissions among the

[6] *Final Statement of Reasons for the Modification of Power Source Disclosure Program*, Docket No. 16-OIR-05, May 8, 2020, at 50-51.

retail suppliers. CMUA recommends that retail suppliers be allocated the GHG emissions for the specified purchases that are matched to the retail supplier's load in that hour, according to the stacking order set by the retail supplier. GHG emissions associated with specified purchases in excess of loss adjusted load should be attributed to the pool of unspecified resources and allocated to retail suppliers purchasing unspecified power during that hour.

a. Plain Language Legislative Intent of SB 1158

The plain language and legislative intent of SB 1158 does not support an interpretation that fully assigns a retail supplier with the GHG emissions associated with oversupply. Public Utilities Code section 398.6(b) specifies the information that retail suppliers must report to the Commission, which includes: "The retail supplier's sources of electricity ***used to serve loss-adjusted load*** for each hour during the previous calendar year."[7] The express direction of this code section is for the retail supplier to report the sources of electricity that were used to serve loss-adjusted load, not the retail supplier's total portfolio of resources during that hour. Had the Legislature intended for retail suppliers to be assigned the GHG emissions for all specified procurement, regardless of whether it is matched to load, the bill would have expressly done so. Instead, SB 1158 is clearly intended to ensure that all GHGs are accounted for through either matching with load or through being assigned to unspecified purchases.

The intent of SB 1158 is set forth in the various legislative history documents. For example, the Assembly Committee on Natural Resources Bill Analysis of SB 1158 quoted the bill author's statement that SB 1158 "directs the CEC to establish rules for electricity suppliers to analyze their sources of electricity and report on the associated greenhouse gas emissions so that we can measure progress and hold everyone accountable to doing their fair share to reduce emissions."[8] The Bill Analysis goes on to describe the concerns that led to the introduction of the bill:

> Proponents of this bill support the proposed hourly reporting of the GHG emissions. Many of the current reporting requirements use an annual accounting methodology which proponents of this bill argue is insufficient as it does not consider the mismatch between hourly deliveries from supplies procured by retail suppliers and the hourly customer load they serve. **Proponents take particular issue with the annual methodology's failure to capture reliance on unspecified power by retail suppliers during many hours of the year (much of which is primarily produced by fossil fuel generation).**
>
> The measurement defined in this bill, loss-adjusted load, corrects for transmission and distribution line-losses. Essentially, this measurement publicizes what is currently buried in confidential portions of the Power Source Disclosure docket. Currently, the amount of electricity procured that is not sold is counted *against* a utility's fossil fuel usage. **By using loss-adjusted load instead of retail sales, the calculations required by the bill include all of the energy that a utility puts into the grid with no hidden offsets**.[9]

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[7] Cal. Pub. Util. Code § 398.6(b)(1) (emphasis added).
[8] Assembly Committee on Natural Resources, Bill Analysis of SB 1158 (Becker), June 27, 2022, at 4.
[9] *Id.* (emphasis added).

This clarifies that the purpose of SB 1158 was to match loss-adjusted load and procurement on an hourly basis. A key goal was to ensure that emissions associated with ***unspecified*** purchases were attributed to the retail suppliers that are actually relying on the market because their specified procurement was less than their loss adjusted load during that hour. The Proposed Updates are inconsistent with this intent because the Proposed Updates would incorrectly attribute emissions to the original retail supplier, even when the generation associated with those emissions was actually only needed to serve another retail supplier's load. Moreover, depending on how the CEC addresses the emissions intensity associated with unspecified power, the Proposed Updates also run the risk of double attribution of the same emissions to two retail suppliers.

The legislative history clearly demonstrates that SB 1158's intent was for a ***more accurate*** assessment of unspecified procurement. The final Assembly Floor Analysis of SB 1158 included the following discussion:

> Supporters state that the bill seeks to modernize the collection and reporting of greenhouse gas emissions data associated with electricity delivered to Californians. **The current approach does not account for whether contracted generators produce electricity at the same time a load-serving entity's (LSE) customers use it and assumes identical GHG emissions for both in-state purchases and imports from different geographic regions despite the fact that the mix of resources that constitute "unspecified" power can vary significantly throughout the portions of the Western grid**. A 24/7 renewable energy approach, which matches renewable energy supply with demand on an hour-by-hour basis, is critically important to help eliminate the demand signal for fossil-based electricity from the grid. SB 1158 also provides comparable reporting between clean energy targets and actual GHG emissions so Californians know how well our electricity suppliers are doing toward meeting those targets.[10]

This history does not support an implementation that uses a default calculation of unspecified resources that does not consider the actual sources of generation being used during that hour. The most reasonable interpretation that supports accurate accounting and correctly measures unspecified procurement is to match a retail supplier's specified procurement (in the stacking order designated by the retail supplier) against the retail supplier's loss adjusted load. Any GHG emissions associated with specified procurement above the loss-adjusted load should be assumed to be part of the pool of unspecified procurement during that hour. Further, any retail supplier with less specified procurement than loss adjusted load should be allocated GHG emissions based on the actual pool of resources available at that time. This approach presents a fair and accurate implementation consistent with the legislative intent.

[10] Assembly Floor Analysis, August 26, 2022, at 3 (emphasis added).

b. Aligning with California's Environmental Goals and Reliability Needs.

The Proposed Updates would create incentives counter to both California's environmental goals and reliability needs. It would do this by reallocating the zero carbon and renewable generation procured by a retail supplier to other entities that did not make any investment in those resources or have any contractual right to the generation. Further, it would create a disincentive for retail suppliers to offer to run their fossil fuel generating resources, particularly during times where reliability need is the greatest.

In the current draft of Proposed Updates, a retail supplier would be allocated the GHG emission from its fossil fueled generating resources ***prior to*** being allocated any of its zero carbon or renewable generation. If during an hour, the retail supplier's specified procurement is more than its loss-adjusted load, any excess MWh of zero carbon or renewable generation is assumed to flow to the grid rather than be allocated to load. This means that any entity procuring unspecified electricity during that hour will presumably receive a lower GHG emissions intensity associated with that unspecified electricity. The retail supplier purchasing unspecified electricity is therefore the beneficiary of the environmental attributes of this excess generation despite having no contractual right to this generation or paying any sort of financial premium for these attributes. This structure creates an incentive for retail suppliers to have less specified procurement in an hour than their loss-adjusted load. Further, it creates a disincentive for a retail supplier to have specified procurement in excess of loss adjusted load because doing so results in the loss of these environmental attributes.

Another consequence of this structure is that it creates a disincentive to operate a fossil fueled generating resource when it is not needed by the retail supplier that owns or has contracted for it to meet its own customer load. For example, if a retail supplier has sufficient zero carbon and renewable generation to meet 100 percent of its loss adjusted load during an hour but also submits a bid for its owned fossil fueled generator into the CAISO market, then the retail supplier will be allocated ***all*** of the GHG emissions associated with that fossil-fueled generator. This attribution would occur despite the fact that the retail supplier did not actually need the fossil fueled generation for meeting its loss adjusted load and the only reason that this generator ran was because the market determined it was needed. These market conditions will be driven by retail suppliers who do not have sufficient specified procurement to match their loss-adjusted load. Yet, under the Proposed Updates it is the retail supplier with ***more*** procurement that is assigned GHG emissions and, instead, the retail supplier with less procurement will receive the benefit of the zero carbon and renewable procurement. Further, this structure only creates this disincentive for fossil-fueled generation that is owned by or under contract with a retail supplier. Merchant generating facilities that are simply bidding into the CAISO market will not face the same consequence as a generator that is owned by or contracted to a retail supplier. As a result, this proposed structure could skew market outcomes such that generators with higher emission intensities are operating instead of generators with lower emission intensities.

The complexity of these issues merits further examination and the Commission should seek additional input on the interaction between the Proposed Updates and the potential market and reliability consequences.

2. *Unspecified Emission Factor*

As described above, a primary goal of SB 1158 was to ***increase*** the accuracy of GHG emissions associated with unspecified procurement by utilizing an hourly accounting of the resources that are actually being used to serve this load. A default emission factor, such as the one utilized in the Proposed Updates is not consistent with this goal, particularly under the hourly accounting structure of SB 1158. The GHG emission intensity associated with the oversupply of all retail suppliers will greatly vary an hourly basis as compared to the systemwide emissions intensity. If retail suppliers with specified procurement less than their loss-adjusted load are allocated a GHG emission intensity that is reflective of the oversupplied resources, then the Commission should seek to calculate the combined emissions of both specified procurement that is unclaimed and any imports or generation bid into the market that is not associated with a specified contract.

The Commission should seek additional stakeholder input on a more accurate assessment of the hourly GHG emissions associated with unspecified procurement.

3. *Line Losses*

As CMUA has previously commented, the issue of line losses is complex and has been challenging in other regulatory contexts. This is due in part to the fact that there are several ways utilities account for line losses in their contracts and procurement. As an example, under the Air Resource Board's ("ARB") Mandatory Reporting Regulation, Section 95111(b)(2), which specifies the assumptions for calculating GHG emissions associated with specified facilities or units, the regulation applies a default transmission loss factor of 1.02 to facilities located outside of a California balancing authority area. However, in recognition of the different ways that line losses are treated in these contracts, the regulations allow for a 1.00 transmission loss factor if the reporting entity "provides documentation that demonstrates to the satisfaction of a verifier and ARB that transmission losses (1) have been accounted for, (2) are supported by a California balancing authority, or (3) are compensated by using electricity sourced from within California."[11] ARB discussed this provision in the Final Statement of Reasons for the 2016 update to the regulations, providing:

> A transmission loss factor of 1.02 is reasonable for those imports where losses from the source to a California balancing authority are "covered" by the source or by a non-California balancing authority. However, a transmission loss factor of 1.0 is appropriate for transactions where the source to California balancing authority losses are covered locally (by or within a California balancing authority), or contractually by the return scheduling of local generation (also known as "loss payback"). The emissions for the energy used to pay back the transmission losses are already accounted for under the reporting requirements, and should not be added again. Using a transmission loss factor of 1.02 in these latter circumstances in effect "double counts" the emissions associated with losses

[11] § 95111(b)(2).

on the transaction, inappropriately increasing the GHG obligation and associated costs to the reporting entity.

> Staff generally agrees with the comments that the 1.0 factor should be retained, and available for use if appropriate, and made corresponding changes in 15-day amendments to the regulation to specify that the reporting entity will provide documentation that demonstrates to the satisfaction of a verifier and ARB that transmission losses: (1) have been accounted for; (2) are supported by a California balancing authority; or (3) are compensated by using electricity sourced from within California.

Consistent with the ARB's approach, the Commission should provide an option to utilize a different approach if the retail supplier can provide the relevant supporting documentation. CMUA recommends that the Commission request additional stakeholder feedback on the best ways to establish rules for such an alternate approach.

4. *Geothermal Emissions*

The Southern California Public Power Authority ("SCPPA") is concurrently submitting comments recommending that the Commission amend its treatment of the emissions associated with geothermal resources. CMUA supports these comments and urge the Commission to act on SCPPA's recommendations.

5. *Exemption of Non-IRP POUs from SB 1158 Reporting Requirements*

SB 1158 exempts small utilities from the reporting, evaluation, and progress assessment requirements associated with the bill. Specifically, Public Utilities Code section 398.6(j) states that the hourly GHG reporting requirements do not apply to "the following types of retail suppliers:

> (1) Load-serving entities that are not subject to the requirements of Section 454.52.
>
> (2) Local publicly owned electric utilities that are not subject to the requirements of Section 9621.

Public Utilities Code section 9621 provides the Integrated Resource Plan requirements for POUs and specifies that the requirements are applicable to a "local publicly owned electric utility with an annual electrical demand exceeding 700 gigawatthours, as determined on a three-year average commencing January 1, 2013."[12]

The Proposed Updates do not currently exempt small utilities pursuant to the direction of Section 398.6(j). The Commission should include an express provision in the regulations that recognizes this exemption.

[12] Cal. Pub. Util. Code § 9621(a).

C. Data Portal

The Staff Report describes the new "Data Submission Portal" and "Snowflake" database that the Commission is currently developing for the PSD's annual reporting requirements and that a similar infrastructure will be used for the SB 1158 reporting requirements. CMUA appreciates the Commission's efforts to streamline and modernize these reporting processes and provides two recommendations below:

1. *Testing, Input, and Training for the New Databases*

New data portals can present numerous challenges for both the agency overseeing the system and the users entering data into the portal. Early testing opportunities help to identify any errors in the user interface and/or the underlying formulas and tools. Further, testing the system with the actual reporting entities helps to identify any confusing instructions or common user errors that may occur.

Prior to the roll-out of the RPS Online System, Commission staff invited an array of utility staff and consultants to demo the new system. This provided a useful training opportunity, but also helped to identify potential improvements to the system. CMUA recommends that the Commission utilize a similar process for the roll-out of the data portal for the annual PSD reporting requirement, and ultimately the SB 1158 data portal. In addition, CMUA urges the Commission to require reporting through the new data reporting portal no earlier than in 2025 to ensure adequate time for testing, education, and implementation.

2. *Test Year for SB 1158 Reporting Requirement*

The SB 1158 reporting requirement is uniquely challenging both in the nature of the data that is reported and the scale of the data involved. Because SB 1158 requires hourly reporting of load and generation data on a facility-by-facility basis, and is adjusted by multiple assumptions, there is a greater likelihood for errors or complications in this process, particularly if a new data portal will be utilized. CMUA recommends that the Commission consider a voluntary early reporting option that would function as a "test year." This could occur in 2027 based on 2026 data.

A test year could provide valuable insight to the Commission on potential problems that may arise in the collection of this data, and identify any issues far enough in advance to adjust the reporting format and instructions. A test year would also be valuable to the reporting entities because it would help identify any missing data that needs to be obtained or any confusion in the reporting requirements.

III. CONCLUSION

CMUA appreciates the opportunity to provide this response to the Commission. Thank you for your time and attention to these comments.