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

*Additional submitted attachment is included below.*



February 21, 2024

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 Revised 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 revised *Pre-Rulemaking Amendments to the Power Source Disclosure Program* (“Revised Proposed Updates”), issued on January 31, 2024, and the *Pre-Rulemaking Updates to the Power Source Disclosure Regulations, Summary of Changes and FAQs* (“Summary of Changes”), both issued on January 31, 2024.

## I. INTRODUCTION

CMUA appreciates the Commission and staff’s engagement with stakeholders throughout this proceeding. The Revised Proposed Updates reflect thoughtful consideration and responsiveness to stakeholder input, and many of the issues that were identified by stakeholders have been addressed. Overall, the Revised Proposed Updates are significantly improved and more closely achieve the goals of Senate Bill (“SB”) 1158 (stats. 2022, Ch. 367, Becker) in a manner consistent with California’s broader environmental and reliability goals. However, in light of the technical complexity of SB 1158, CMUA encourages the Commission to continue outreach to stakeholders to ensure that these regulations do not lead to any unintended negative consequences.

In these comments, CMUA identifies the changes to the revised proposal that CMUA supports, specific areas where additional changes or clarifications are needed, and proposals that CMUA still has concerns with. Specifically, CMUA urges the Commission to:

- adopt the hourly accounting structure proposed in the Revised Proposed Updates;
- clarify that the emission factor for unspecified power will be based on a calculation that only includes resources used to serve retail suppliers subject to SB 1158;

- expressly authorize more options for providing an alternative to the default line loss factor;
- provide the formula or methodology for how the Commission will calculate the line loss factor for unspecified power;
- consider adopting new default line loss factors each year;
- allow retail suppliers to provide proxy load data;
- adopt the language recognizing the express exemption of small publicly owned utilities (POUs) from the requirements of SB 1158;
- base the new “Total Power Content” category of the power content label on the resources used to meet all retail sales rather than loss adjusted load;
- provide sufficient time between the effective date of the changes to the annual reporting requirements and the initial reporting year;
- not include the new explanatory parenthetical for unspecified power;
- provide express direction for the inclusion of emerging technologies in the power content label;
- clarify the reporting requirements applicable to those POUs that are exempt from SB 1158 after the Commission has consolidated the annual and hourly reporting forms; and
- ensure that there is a sufficient opportunity for testing and revising the consolidated hourly and annual reporting form prior to the forms being finalized.

## II. COMMENTS ON THE REVISED PROPOSED UPDATES

### A. SB 1158 Implementation

#### 1. Hourly Accounting Rules

- a. The Revised Proposed Hourly Accounting Rules are Consistent with the Plain Language and Statutory Intent of SB 1158 in a Manner Consistent With California’s Environmental and Reliability Needs.

CMUA strongly supports the overall structure of the hourly accounting rules as reflected in the Revised Proposed Updates and urges the Commission to adopt this structure. This new proposal is significantly improved from the hourly accounting rules proposed in the prior version of proposed regulations. Specifically, retail suppliers will now have the discretion to determine the stacking order of their resources,<sup>1</sup> the retail supplier will only be attributed the greenhouse gas (GHGs) emissions associated with resources that fall below their loss-adjusted load<sup>2</sup> (with the exception of coal),<sup>3</sup> and GHGs attributed to a retail supplier’s oversupply will be used to calculate the emissions factor for unspecified resources in that hour.<sup>4</sup>

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<sup>1</sup> Revised Proposed Updates, Section 1392(c)(4)(A).

<sup>2</sup> *Id.* at Section 1392(c)(8).

<sup>3</sup> *Id.* at Section 1392(c)(1).

<sup>4</sup> *Id.* at Section 1392(c)(8)(B).

This structure is (i) consistent with and authorized by Public Utilities Code sections 398.6, (ii) carries out the legislative intent of SB 1158, and (iii) supports California’s environmental goals and reliability needs. Specifically, Public Utilities Code section 398.6(b) directs retail suppliers to report their “sources of electricity used to serve loss-adjusted load for each hour during the previous calendar year.”<sup>5</sup> The express statutory direction 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. 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. As CMUA cited in its prior comments, the various legislative history documents support an implementation of SB 1158 that fairly attributes GHG emissions to those retail suppliers that are relying on unspecified power during a specific hour.<sup>6</sup> A structure that takes the GHGs associated with all retail suppliers’ oversupply and attributes those GHGs to unspecified procurement is consistent with this approach. Further, the revised proposal fairly allocates the zero carbon attributes of generation to the retail supplier that has paid for those attributes and avoids creating a disincentive for a retail supplier to bid fossil fueled generation to the market at times of system need. This is consistent with California’s broader environmental policies and supports system-wide reliability.

While CMUA supports this overall structure, CMUA notes that significant changes were made to the regulatory language and therefore, urges a careful review to ensure that the language is consistent with the Commission’s intent. Other than as proposed below, CMUA does not have specific recommendations at this time, but will continue a technical review of the proposed language and will notify the Commission if it identifies any issues.

b. The Commission Should Consider Further Revisions to the Unspecified Emission Factor to Ensure that only Resources Being Used to Serve Retail Supplier Load are Included in the Calculation.

The Revised Proposed Updates clarify that the Commission will determine the GHG emissions intensity for unspecified power in each hour by calculating the sum of “all GHG emissions associated with unspecified imports, unclaimed in-state natural gas resources, and oversupply in that hour divided by the sum of all MWh associated with unspecified imports, unclaimed in-state natural gas resources, and oversupply in that hour, taking cogeneration into account using the method provided in Section 1392(a)(9)(E).”<sup>7</sup> As stated above, CMUA supports this structure and general approach. However, CMUA recommends that the Commission refine this calculation to ensure that the pool of resources that are included in this calculation are those that are being used to serve the load of those retail suppliers that are subject to these regulations and not simply the total amount of unclaimed resources in a given hour. For example, small publicly owned utilities (POUs) are exempt from the hourly accounting rules and therefore, including their generation without accounting for their loss adjusted load could skew the unspecified emissions calculation. The Commission should consider if there are estimation methodologies to account for generation

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<sup>5</sup> Cal. Pub. Util. Code § 398.6(b)(1) (emphasis added).

<sup>6</sup> CMUA Comments on Pre-Rulemaking Proposed Updates to the Power Source Disclosure Regulations, Oct. 24, 2023, at 4-6.

<sup>7</sup> Revised Proposed Updates, Section 1392(c)(7).

being used to serve loads not subject to SB 1158 that would not require additional reporting by entities not subject to SB 1158. Alternatively, the Commission should exclude in-state gas resources that are owned by or under contract with retail suppliers that are not subject to these regulations.

CMUA recommends the following modifications to the regulatory language:

(A) Energy Commission staff shall publish hourly GHG emissions intensities for hourly unspecified power each year. Hourly GHG emissions intensities shall be calculated as the sum of all GHG emissions associated with unspecified imports, unclaimed in-state natural gas resources used to serve the loss adjusted load of retail suppliers subject to the hourly data reporting requirements of this Section 1392(c), and oversupply in that hour divided by the sum of all MWh associated with unspecified imports, unclaimed in-state natural gas resources, and oversupply in that hour, taking cogeneration into account using the method provided in Section 1392(a)(9)(E).

- c. The Commission Should Exclude Any Emissions Associated with Geothermal Resources in the Hourly Accounting Calculation.

As clarified in Staff’s Summary of Changes, the Revised Proposed Updates were changed to remove the emissions associated with geothermal resources from the power content label (PCL) in order to “align the [PCL] with the GHG emissions subject to a compliance obligation under Cap-and-Trade.”<sup>8</sup> CMUA strongly supports this change and appreciates the Commission’s responsiveness to stakeholder comments on this issue. However, the same rationales that support excluding geothermal emissions from the PCL apply equally to the hourly accounting provisions of SB 1158. As the state engages in aggressive decarbonization efforts, it is important for customers to get information about the known carbon intensity of the resources used to serve their load. Geothermal generation is an expressly recognized eligible renewable resource that also supports the grid’s reliability needs. The Commission’s regulations should not devalue or otherwise disincentivize geothermal generation. This is especially important given that the emissions are naturally occurring and not directly attributable to the electricity generation.

Therefore, CMUA recommends that the regulations be modified to expressly clarify that in calculating a retail supplier’s hourly emissions attributable to its loss adjusted load, that any emissions associated with geothermal resources be excluded.

- d. The Commission Should Apply the Same Treatment for Eligible Firmed and Shaped Resources in Both the Annual and Hourly Accounting Rules.

The Commission’s regulations for annual accounting provide an express adjustment for certain eligible firmed and shaped resources. Specifically, for the deliveries from transactions that qualify as firmed and shaped and are associated with transactions or ownership agreements

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<sup>8</sup> Summary of Changes at 2.

executed prior to January 1, 2019 or eligible firm-and-shaped products as defined above, the retail supplier only reports the emission associated with the renewable resource and not the substitute energy. This clarification is necessary to acknowledge the treatment of contracts and ownership agreements entered into prior to June 1, 2010, which Portfolio Content Category (PCC 0) is not specifically recognized in the PDS regulation. This treatment aligns with other related regulations, including the renewables portfolio standards (RPS) and Cap and Trade.

In order to align with the PCL, RPS, and Cap and Trade, CMUA recommends that the Commission apply the same treatment to the hourly accounting rules. Specifically, if a Retail Supplier has a resource that meets the requirements of Section 1392(b)(6)(A), then the Retail Supplier should only have the renewable resource included as part of its resource stack and only the emissions associated with the renewable resource attributed to its load.

## 2. Line Losses

### a. The Commission Should Expressly Allow for More Options as an Alternative to the Line Loss Default Factor

CMUA strongly supports the intent of the new Section 1392(c)(2)(B), which allows a retail supplier to demonstrate that line losses have already been accounted for and thus, no loss adjustment factor needs to be applied. This improves upon the prior draft and is responsive to the comments of CMUA and other stakeholders that highlighted the need to ensure that actual line losses be used when that data is available. However, as drafted, this language could be interpreted narrowly to only allow an alternative approach that demonstrates that the line losses are accounted for on a contractual basis. CMUA recommends that the language be modified to expressly allow other approaches where the retail supplier can demonstrate what the actual line losses were or provide a much closer approximation than the default emission factors. This approach supports greater accuracy and is therefore consistent with the intent of SB 1158. In providing this broader flexibility, the Commission should expressly allow retail suppliers to provide alternative loss factors for just a subset of their resources, rather than for all of their resources.

CMUA recommends the following modifications to the regulatory language:

(B) As an alternative to using the loss-adjustment factors for specified resources pursuant to subdivision (A), retail suppliers may provide documentation that [supports the use of a different loss adjustment factor, provides the actual line losses applicable to a given specified resource, or that](#) demonstrates that transmission and distribution losses have [already](#) been accounted for.

### b. The Commission Should Consider Calculating New Default Loss Factors Each Year Rather Than Adopting Fixed Default Factors.

The Revised Proposed Updates would establish 4 percent and 6 percent, respectively, as the default line loss factors for in-state resources and out-of-state imports. As staff previously described, these loss factors are based an analysis of historical EIA loss reporting. CMUA encourages the Commission to consider a further increase in the accuracy of loss accounting by

calculating the default loss factors on a yearly basis using the best available data, including consideration of alternative loss factors provided by retail suppliers, rather adopting a static historical estimate. CMUA recommends further discussion on this proposal prior to initiating the formal rulemaking process.

- c. The Commission’s Regulations Should Provide the Methodology and/or Formula that the Commission Will Use to Determine the Line Loss Adjustment Factor for Unspecified Purchases.

Section 1392(c)(2)(C) of the Revised Proposed Updates states that the Commission will calculate and publish the hourly loss adjustment factor for hourly unspecified power. CMUA does not object to this general approach, but does recommend that the Commission provide in its regulations either the specific methodology or formula that the Commission will use to make this determination. CMUA also requests that the posting of these hourly loss adjustment factors be in a format that includes the source data and assumptions used to derive these factors. Such an approach would increase transparency and allow stakeholders to provide input on any potential issues with the proposed methodology.

### **3. Proxy Load Data**

- a. The Commission’s Regulations Should Allow Retail Suppliers to Provide Hourly Proxy Load Data.

Section 1393(c)(1) of the Revised Proposed Updates allow Retail Suppliers to provide proxy generation data if they are not able to obtain actual hourly generation data. CMUA recommends that provision be expanded to allow for proxy hourly load data if the Retail Supplier does not have access to hourly load data for all of its customers. For example, if certain customers do not have metering that allows for hourly measurements, the Retail Supplier could calculate hourly load based on load profiles for similar customer types.

### **4. Exemption for Small POUs**

- a. CMUA Supports the Express Regulatory Language in the Revised Proposed Updates Recognizing that Certain Small Utilities are Exempt from the Hourly Accounting Requirements.

SB 1158 expressly exempts certain small utilities from the reporting, evaluation, and progress assessment requirements associated with the legislation. Specifically, Public Utilities Code section 398.6(j) states that the hourly GHG reporting requirements do not apply to “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.”<sup>9</sup>

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<sup>9</sup> Cal. Pub. Util. Code § 9621(a).



The Revised Proposed Updates now include a Section 1392(g), which expressly exempts small POUs from the requirements of SB 1158. This change is consistent with SB 1158 and CMUA strongly supports its inclusion in the regulations.

## **B. Annual Reporting**

### **1. Categories Included in the Power Content Label**

#### **a. CMUA Strongly Supports the Removal of “Other Electricity End Uses” from the Proposed Updates to the PCL**

The prior draft of regulations included a proposal to add a new column to the PCL that would include the resource mix and GHG emissions intensity for “Other Electricity End Uses,” which would include “all non-retail sales end uses (such as self-consumption and municipal loads) and all electricity lost to transmission and distribution.”<sup>10</sup> In the Summary of Changes, Staff clarified that they removed this proposed category because they agreed with the various stakeholders that argued that this category would be confusing for customers. CMUA agrees with this conclusion and strongly supports the removal of this category from the updates to the PCL.

#### **b. The Commission Should Base the “Total Power Content” Category of the PCL on Retail Sales.**

The Revised Proposed Updates maintain the Commission’s proposal to add a new column to the PCL referred to as the “Total Power Content.” This column would include the resource mix and GHG emissions intensity for all resources needed to serve a Retail Supplier’s total “loss-adjusted load,” which includes the load needed to meet annual retail sales after transmission and distribution losses are accounted for, as well as any load associated with self-consumption. In opening comments, CMUA urged the Commission to not use loss-adjusted load as the basis for this category because the plain language of Public Utilities Code section 398.4 clearly specifies that the PCL should be based on “retail sales” and not any other standard, such as loss adjusted load. In the Summary of Changes, staff clarified that:

Public Utilities Code Section 398.4 requires retail sales to be the denominator for retail portfolios, and the proposed approach calculates and discloses everything required in this section. However, limiting disclosures to the information specified under Section 398.4 has resulted in a power content label that falls short of the PSD program’s legislative purpose under Section 398.1(b) to provide fuel mix and GHG intensity data about electric services to consumers that is “accurate, reliable, and simple to understand.” Disclosure of the power sources and emissions that support a retail supplier’s electric service operation, including losses and other end uses, is critical to the program’s explicit legislative purpose.<sup>11</sup>

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<sup>10</sup> Summary of Changes at 7.

<sup>11</sup> *Id.*

When the Commission implements a statute, it must follow the established rules of statutory construction. California’s courts have given the following guidance for interpreting a statute:

“We begin by examining the statutory language, giving the words their usual and ordinary meaning.” **If the language of a statute is clear, we must follow its plain meaning.** “If, however, the language is susceptible to more than one reasonable interpretation, then we look to ‘extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.’”<sup>12</sup>

Thus, under the rules of statutory construction, if the meaning of a statute is clear, no further analysis is necessary to determine the intent of the Legislature. The plain meaning of the statute must be carried out. In this case, the Summary of Changes acknowledges that the clear language of Public Utilities Code section 398.4 requires retail sales to be in the denominator for the PCL. However, the staff analysis goes on to determine that in order to effectuate the intent of the legislation, a different standard must be used. Such an implementation exceeds the Commission’s authority under the authorizing statute.

Even considering the Summary of Change’s argument that the PCL must be changed so that it is “accurate, reliable, and simple to understand,” the use of loss-adjusted load does not support this goal. Self-consumption and line losses are not concepts readily understood by the general public. Further, as noted above, line losses are addressed in a wide variety of different ways by utilities, which could result in different reported information that may not be align with an actual increase or decrease in emissions. The Summary of Changes does not demonstrate that this clear likelihood of increased customer confusion would be outweighed by a significant or widespread misrepresentation in the current PCL.

CMUA urges the Commission to base the proposed Total Power Content category on the total retail sales of all offerings consistent with the authorizing statute.

## 2. Effective Date

- a. The Commission Should Provide Adequate Time Between the Effective Date of the Annual Reporting Regulations and the Initial Reporting Year.

The Revised Updated Regulations introduce a new reporting category that may require complicated new data to be gathered and demonstrations to be made. Therefore, CMUA urges the Commission to ensure that there is sufficient time between the effective date of the regulations and the initial reporting year. There will need to be sufficient time for the Commission to update its templates and provide adequate guidance, as well as for the Retail Suppliers to review and identify any potential issues or questions. For example, if the Regulations are approved by the Office of Administrative Law in September of 2024, the reporting requirements should not be effective until the 2025 reporting year.

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<sup>12</sup> Park Med. Pharmacy v. San Diego Orthopedic Assocs. Med. Grp., Inc., 99 Cal. App. 4th 247, 251 (2002) (internal citations omitted) (emphasis added).

### **3. Unspecified Power Footnote**

- a. The Commission Should Not Include the New Explanatory Parenetical for Unspecified Power.

The Revised Proposed Updates would add the following explanatory parenthetical to the resource identification included in the PCL for unspecified resources: “Unspecified Power (primarily fossil fuels).”<sup>13</sup> The Summary of Changes does not provide any explanation of why this was included or any analysis to support this conclusion. It is CMUA’s understanding that a wide range of resources will make up unspecified procurement and that this can vary significantly over the course of the year and will continue to evolve as California and the West reduce emissions. If the Commission determines that greater explanation is necessary for unspecified power, the Commission should use a more precise description, which is likely not possible in a simple parenthetical.

### **4. Treatment of Emerging Technologies**

- a. The Commission Should Provide Express Direction Regarding the Treatment of New Resource Types in the PCL.

Public Utilities Code section 398.4(h)(6) authorizes the Commission to specify other categories fuels, sources of energy, and electricity products to include on the PCL. There are several emerging technologies that are not currently reflected in the Commission’s regulations, including green hydrogen and thermal plants that are retrofitted in carbon capture and sequestration (CCS). The Commission should not defer providing a clarification on these resources until a subsequent rulemaking. POUs are making substantial investments to demonstrate these emerging zero-carbon technologies, some of which will be coming online in the next few years. The Commission should provide regulatory certainty on the treatment of these resources to help support these investments.

## **C. Consolidated Annual and Hourly Reporting**

### **1. Post-2028 Reporting**

- a. The Commission Should Clarify that the Consolidated Reporting Requirements will not be Applicable to Small POUs.

Section 1393(a)(3) of the Revised Proposed Updates would require that all retail sellers meet the annual reporting requirements through the submission of hourly data, as required by SB 1158. However, small POUs are exempt from the hourly reporting requirements of SB 1158. Section 1393(a)(3) should be amended to clarify that this consolidated reporting requirement will not apply to exempt POUs. The Commission should give guidance on how these exempt POUs will complete the annual reporting requirements.

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<sup>13</sup> Revised Proposed Updates, Section 1393.1(c)(1)(J).

- b. The Commission Should Ensure that there has Been Adequate Testing, Stakeholder Input, and Training Before Requiring the Use of a Consolidated Annual and Hourly Report.

The new hourly emissions reporting requirement will involve a massive increase in the quantity of data reported and the complexity of the associated calculations. In order to ensure that the ultimate data is accurate, CMUA strongly encourages the Commission to engage in significant outreach to obligated reporting entities. This outreach should include providing draft reporting forms to retail suppliers to get input on technical errors, areas of confusion, and potential improvements. Staff should also provide training well in advance of the reporting deadline. CMUA also encourages the Commission to consider making 2027 an optional test year for hourly reporting.

### **III. CONCLUSION**

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