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**on Proposed 2nd 45-Day Language Amendments to the Power Source Disclosure Regulations**

*Additional submitted attachment is included below.*



November 19, 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 Proposed 2<sup>nd</sup> 45-Day Language Amendments 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 proposed *Revisions to the Power Source Disclosure Program* (“2<sup>nd</sup> 45-Day Language”), issued on October 4, 2024. CMUA appreciates both the Commission and staff’s efforts in developing this second set of proposed revisions to the power source disclosure regulations. CMUA generally supports the updates included in this most recent version of the proposed regulations and believes that the 2<sup>nd</sup> 45-Day Language makes several improvements to the prior draft. However, CMUA recommends certain changes to the draft language in order to ensure that data included in the power content labels (“PCL”) is both accurate and simple for customers to understand. Specifically, CMUA’s comments recommend that the Commission:

- clarify how the default transmission and distribution (“T&D”) loss factors are calculated and applied;
- adopt the new category of “emerging technology” as proposed in the 2<sup>nd</sup> 45-Day Language;
- clarify how emerging technologies will appear on the PCL;
- include a footnote describing the new Total Power Content column that will be included on PCLs;
- include a description of the difference between the PCL and the renewables portfolio standard (“RPS”) program;
- clarify how unspecified power appears on the PCL; and
- provide more details on how the Commission will calculate the new category of California’s total loss-adjusted load.

## I. COMMENTS ON THE 2<sup>nd</sup> 45-DAY LANGUAGE

### A. Transmission and Distribution Loss Factors.

CMUA generally supports the process proposed in Section 1392(a)(8) of the 2<sup>nd</sup> 45-Day Language for developing the default transmission and distribution (“T&D”) loss factors used to calculate loss-adjusted load. The use of data gathered through the EIA Form-861 reporting process provides a reasonable approximation of T&D losses for retail suppliers in California. However, as currently drafted, it is unclear how this calculation would be performed and applied. Specifically, it is unclear whether Commission staff will establish a single default T&D loss factor for all retail suppliers in the state or, instead, calculate a separate default T&D loss factor for each individual retail supplier. Further, the proposed language in Section 1392(a)(8) implies that there would be different loss factors for in-state resources, imported resources, and unspecified procurement. However, the data reported by retail suppliers in Form 861 includes a single value for “total energy losses,” which represents the “total amount of electricity lost from transmission, distribution, and/or unaccounted for.”<sup>1</sup> These losses are calculated by subtracting the retail supplier’s total sales to retail customers and wholesale sales from the retail supplier’s total sources of energy, which includes owned generation, purchases, and adjustments to account for exchanges, wheeling, and losses associated with transmission by other entities.<sup>2</sup> There does not appear to be any data in Form 861 that suggests how to divide the single “total energy loss” value across in-state, imported, and unspecified power. Given the source of data that the Commission intends to rely upon, it is not clear how these calculations would be performed.

CMUA recommends a simple, transparent, and more accurate approach where each retail seller has its own default T&D factor that is calculated based on the loss and total disposition columns in the Form 861 data. This default factor would be applied to all purchases (specified and unspecified) made by that retail supplier. To clarify this process, CMUA recommends the following amendments to the 2<sup>nd</sup> 45-Day Language:

#### **Section 1392(a)(8) Transmission and distribution losses**

(A) A retail supplier’s transmission and distribution losses shall be determined by applying a loss factor to each specified resource and to unspecified power.

(B) Each retail supplier shall apply default loss factors calculated annually by CEC staff. Default loss factors shall be calculated for each individual retail supplier ~~These factors shall be~~ based on the total energy losses divided by ~~and~~ total energy disposition reported by the retail supplier in the most recent final data released by the U.S. Energy Information Administration collected pursuant to 15 U.S.C. 722(b) via EIA Form-861 (Annual Electric Power Industry Report). A retail supplier shall apply the applicable default loss factor to all specified and unspecified purchases unless the retail supplier provides an alternative loss factor for the specified purchase pursuant to subdivision (a)(8)(C) ~~Loss factors for in-state and imported resources shall be weighted according~~

<sup>1</sup> See EIA, EIA-861 Annual Electric Power Industry Report, Instructions, *available at*: [https://www.eia.gov/survey/form/eia\\_861/instructions.pdf](https://www.eia.gov/survey/form/eia_861/instructions.pdf).

<sup>2</sup> *Id.*

~~to the ratio of specified in-state and unspecified resources versus specified imports from the prior year as reported under this program.~~

(C) As an alternative to the loss factors under subdivision (a)(8)(B), a retail supplier may calculate and report a transmission and distribution loss factor directly for any specified resource. The retail supplier must provide substantiating documentation supporting the loss factor claim.

## **B. Emerging Technologies Definition.**

CMUA strongly supports the 2<sup>nd</sup> 45-Day Language’s proposed definition for “emerging technologies” that would be added to Section 1391 and the inclusion of an emerging technology category on the PCL as proposed in Section 1393.1(c)(1)(K). As CMUA described in prior comments, there are several new technology categories that are advancing rapidly and may reach commercial viability within the next few years. Including this new emerging technology category will allow retail suppliers to accurately report to their customers about this procurement even if the Commission has not updated the power source disclosure (“PSD”) regulations to expressly include this technology type.

CMUA urges the Commission to clarify in the Final Statement of Reasons (“FSOR”) that the intent of this provision is to specifically include, but not be limited to, carbon capture and sequestration (“CCS”) technologies that are utilized in combustion generation facilities as well as hydrogen that is produced with renewable or zero carbon electricity. Further, it is CMUA’s understanding that the proposed five year timeline included in the definition of emerging technologies was used because Commission staff expect to amend the PSD regulations to incorporate new technologies within five years of the technology becoming commercially available. If the Commission fails to amend the PSD regulations within five years, that failure should not force the retail supplier to list an otherwise low or zero-emission technology as an emitting resource, which would effectively penalize retail suppliers for investments in emerging technologies. CMUA recommends that the FSOR provide guidance on the Commission’s intent in the circumstance that five years elapses without an update to the PSD regulations, and clarify that if the Commission does not act, the retail supplier will still be able to accurately report CCS and renewable hydrogen procurement to its customers as “emerging technologies.”

## **C. Emerging Technologies on the PCL**

Proposed Section 1393.1(c)(2) of the 2<sup>nd</sup> 45-Day Language specifies that the various fuel types should be categorized into one of two options on the PCL: (A) renewable and zero carbon, and (B) fossil fuel. However, this section does not specify how to categorize emerging technologies. This lack of clarity in the regulations must be addressed and there needs to be some mechanism to designate which category an emerging technology will be included in. However, because the emerging technology category is intended to cover a range of unknown future technology types, CMUA supports providing Commission staff with the flexibility to make this determination. CMUA recommends that the Section 1393.1(c)(2) be modified to clarify that an emerging technology will be categorized as zero carbon if the resource is determined to be predominantly carbon free, as follows:

**Section 1393.1(c)(2)** The fuel mix information disclosed above in Section 1393.1(c)(1) shall also be displayed on the power content label in ~~as~~ one of the following groups:

(A) Renewables and Zero Carbon Resources from fuel types identified in Section 1393.1(c)(1)(A)-(G). RPS-eligible renewables shall be identified as a subcategory of this group. Beginning in 2026, the portion of unspecified power derived from these fuel types shall be included in this group. [An emerging technology shall be included in this group if the technology is predominantly a zero-carbon resource.](#)

(B) Fossil Fuels from fuel types identified in Section 1393.1(c)(1)(H)-(I). Beginning in 2026, the portion of unspecified power derived from these fuel types shall be included in this group.

#### **D. Description of Total Power Content.**

The 2<sup>nd</sup> 45-Day Language deleted a previously proposed explanatory footnote to be included on the PCL, which described “total power content.” CMUA urges the Commission to keep an explanatory footnote because this new category is very likely to be confusing for customers and will likely generate significant questions. Without an explanation included directly on the PCL, customers are unlikely to understand its relevance and the information that it conveys about their retail supplier. Without any context, the value of this additional reporting is likely to be greatly diminished. In order to ensure that the PCL is simple to understand, CMUA proposes the following footnote language:

**Section 1393.1(I)** The power content label shall include the following statements and information in footnotes:

...

[\(2\) “The “\[Retail Seller\] Energy Total” column of this label provides the aggregate data for all of \[Retail Seller\]’s sources of energy that are used to meet all of \[Retail Seller\]’s retail sales to its customers, as well as any electricity that \[Retail Seller\] consumes itself \(such as in its own facilities\), and the electricity that is lost in the transmission and distribution of electricity to \[Retail Seller\]’s retail customers.”](#)

#### **E. Description of Relationship Between the PCL and RPS.**

The Commission’s first 45-Day Language included a proposed footnote that distinguished between the PCL and the RPS program. Confusion regarding the differences between the PCL and RPS is a significant issue and POUs often receive questions from their communities and governing boards on this topic. The misalignment between these two programs often causes customers to reach incorrect conclusions about the RPS compliance status of their utility. An explanation directly on the PCL would provide significant benefits and greatly improve the value of the PCL. However, this part of the proposed footnote was deleted in the 2<sup>nd</sup> 45-Day

Language. CMUA urges the Commission to keep this language on the PCL and recommends the following modifications:

**Section 1393.1(I)** The power content label shall include the following statements and information in footnotes:

(1) “This label does not reflect compliance with the Renewables Portfolio Standard (RPS), which measures the application of tracking instruments, called Renewable Energy Credits (RECs), over the course of multi-year compliance periods. RECs that are purchased separately from the renewable energy (referred to as “Unbundled RECs”) ~~renewable energy credits (RECs)~~ do not factor into the power mixes or GHG emissions intensities above, but they can be used for compliance with ~~the California's Renewables Portfolio Standard (RPS)~~. The results depicted on this label reflect electricity procurement for a single reporting year and are based on counting rules that differ from the RPS. Consequently, this label may not include all eligible renewable procurement that will count towards RPS compliance for the applicable reporting year.”

#### **F. Treatment of Unspecified Power on the PCL.**

The 2<sup>nd</sup> 45-Day Language would amend the PCL such that, after 2026, the annotation provided for unspecified power will include the actual percentage of unspecified power that is provided by either (i) fossil fuels or by (ii) renewable and zero carbon resources. CMUA strongly supports this concept because it will increase the accuracy of the PCL and not hardwire certain assumptions into the regulations. As CMUA previously commented, the percentage of unspecified power met with zero carbon and renewable resources is likely to increase as California’s grid becomes greener over the coming years.

However, the proposal included in the 2<sup>nd</sup> 45-Day Language for this provision includes a confusing clause at the end of the sentence. The current proposal states that the annotation will include the percentage of unspecified power from either of the two categories “*whichever group was greater for the prior year.*” It therefore appears that if fossil fuel resources provided 60 percent of unspecified power, then there would only be a single row for unspecified power that would be categorized with the fossil fuel resources and simply include an annotation with the 60 percent number. This approach would be confusing for customers because it would not be clear what technologies made up the other 40 percent of unspecified power. CMUA recommends that, for post-2026 PCLs, the annotation for unspecified power includes the percentage for **both** categories. This could be included in a single row or as two separate rows. To accomplish this change, CMUA proposes to simply delete the language at the end of Section 1393.1(c)(1)(J) that references which group was greater, as follows:

**Section 1393.1(c)(1)(J) Unspecified power**

(i). The display of unspecified power on the power content label shall be annotated to identify whether the unspecified power was provided primarily by either “Fossil Fuels” or “Renewables and Zero Carbon Resources” as those groups are described in 1393.1(c)(2), whichever group was greater for the previous year.

(ii). Beginning in 2026, the annotation of unspecified power shall include the percentage of unspecified power provided by either “Fossil Fuels” or “Renewables and Zero Carbon Resources” as those groups are described in 1393.1(c)(2); ~~whichever group was greater for the previous year.~~

**G. Calculation of California’s Loss Adjusted Load**

In the Commission’s summary of the proposed amendments included as part of the 2<sup>nd</sup> 45 Day Language package, the Commission explained that it would be updating California’s statewide load to include T&D losses as well as to base this value on data reported in the PSD program rather than through the Total System Electric Generation (“TSEG”). To implement this change, the 2<sup>nd</sup> 45-Day Language, adds the following sentence to the end of Section 1393.1(a)(3): “Beginning January 1, 2026, the Energy Commission shall instead provide the fuel mix and GHG emissions intensity of California’s total loss-adjusted load for inclusion on the power content label.” As drafted, this language does not describe what the source of this data will be and how this calculation will be performed. There is no reference to the change in the underlying database as described in the Commission’s summary. CMUA recommends that the Commission add greater detail in the actual regulatory language in order to clarify what California’s total loss-adjusted load will be based on.

**II. CONCLUSION**

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

Respectfully submitted,

/s/ Derek Dolfie

Derek Dolfie  
Director of Energy  
California Municipal Utilities Association  
915 L St., Suite 1210  
Sacramento, CA 95814  
(916) 827-7113  
ddolfie@cmua.org

/s/ Justin Wynne

Justin Wynne  
BRAUN BLAISING & WYNNE, P.C.  
555 Capitol Mall, Suite 570  
Sacramento, California 95814  
(916) 326-5812  
wynne@braunlegal.com