DOCKETED

Docket Number:	14-OIR-01
Project Title:	Power Source Disclosure Program Rulemaking
TN #:	210213
Document Title:	California Municipal Utilities Association Comments: On Proposed Modifications to Power Source Disclosure Regulations
Description:	N/A
Filer:	System
Organization:	California Municipal Utilities Association
Submitter Role:	Public
Submission Date:	2/5/2016 4:54:44 PM
Docketed Date:	2/5/2016

Comment Received From: California Municipal Utilities Association
Submitted On: 2/5/2016
Docket Number: 14-OIR-01

On Proposed Modifications to Power Source Disclosure Regulations

Additional submitted attachment is included below.

STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:	Docket No. 14-OIR-01
Rulemaking to Consider Modifications to the Electricity Generation Source Disclosure Regulations	

COMMENTS OF THE CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION

I. INTRODUCTION

The California Municipal Utilities Association ("CMUA") appreciates the opportunity to provide comments to the California Energy Commission ("Commission") on the proposed *Modification of Regulations Governing the Power Source Disclosure Program* ("Proposed Modifications"), issued on December 18, 2015.

CMUA supports the Commission's effort to update the Power Source Disclosure Program ("PSDP"). Both the electric utility industry and the mandates applicable to electric utilities have changed dramatically over the last decade. The Power Content Label ("PCL") has not evolved with the industry and is not aligned with California's current environmental regulations. In particular, electric customers regularly raise questions about the apparent conflict between their utility's PCL and their utility's statements regarding compliance with the Renewables Portfolio Standard ("RPS"). Consequently, the PCL has become a source of confusion for customers.

Based on Commission staff's statements at the January 6, 2016 *Staff Workshop to Receive Public Comments on the Proposed Modifications to the Regulations* ("Staff Workshop"), CMUA understands that the immediate focus of the Commission is implementing the changes

necessary to comply with Assembly Bill 162 (stats. 2009). Staff indicated that a subsequent rulemaking would consider broader changes to the PSDP, such as aligning the PCL with the RPS. CMUA urges the Commission to initiate a successor rulemaking as soon as possible in order to address the broader issues with the PSDP.

II. COMMENTS ON THE PROPOSED MODIFICATIONS

A. The WREGIS Certificate Numbers Should Not Be Required For Compliance With the PSDP.

The Proposed Modifications would require that retail suppliers provide, as part of the Retail Supplier Report, the WREGIS certificate numbers for all specific purchases.[1] This requirement is unnecessarily burdensome, and imposes requirements on specific purchases that actually increase the potential inconsistency with the RPS.

Publicly owned electric utilities ("POUs") already provide WREGIS certificate numbers to the Commission as part of either the RPS Annual reporting or Compliance Period reporting requirements. The actual method that POUs use to provide WREGIS certificate numbers to the Commission is by generating a "State/Provincial/Voluntary Compliance Report" within the WREGIS system and then causing that Compliance Report to be provided to the Commission.

Under the RPS program, WREGIS certificate numbers are not organized based on the year that the RECs were purchased. Instead, RECs (and the associated WREGIS Certificate numbers) are reported to the Commission based on the Compliance Period in which the POU claimed the REC for compliance. It is actually possible that a POU's RPS Annual Report would not include any WREGIS certificate numbers because individual POUs may have different strategies about when RECs are retired and claimed for compliance.

[1] *See* Express Terms, Section 1394(a)(2)(A)(1.).

Compliance Period Reports are submitted on a three or four-year schedule, and may include WREGIS certificates numbers for RECs purchased in one year, but retired in the next. It is even possible that RECs could be procured in one Compliance Period, but retired and claimed for compliance in a subsequent Compliance Period.

The Proposed Modifications would require a POU to completely reorganize and reanalyze all of its WREGIS certificate numbers and resubmit them to the Commission. This effort would serve no additional verification purpose, and would likely cause confusion.

B. The Commission Must Reject Any Recommendation to Eliminate or Restrict Section 1394(b)(2).

On July 1, 2015, Pacific Gas and Electric ("PG&E"), Southern California Edison ("SCE"), and San Diego Gas and Electric ("SDG&E") (collectively "Joint IOUs") jointly filed comments recommending that the Commission apply the independent audit requirements of Section 1394(b) to all retail suppliers, including public agencies.[2] PG&E reiterated this position at the Staff Workshop on January 6, 2016. The Joint IOUs argue that the current regulations do not treat public and non-public entities consistently. This argument ignores fundamental differences between the decision-making process and the level of transparency between private companies and public agencies.

As public agencies, POUs are subject to the open meeting requirement of the Brown Act.[3] These public meetings are held locally, and the public has easy access to participate and comment on POU procurement decisions. Further, the Public Records Act requires that public entities, such as POUs, must make all "records" available to the public, with certain limited

[2] *See* Joint Utility Comments on the California Energy Commission's Power Source Disclosure Program Pre-Rulemaking Draft Regulations, July 1, 2015.
[3] Cal. Gov. Code §§ 54950-54963.

exceptions.[4] These two statutory requirements mean that POU contracts and procurement decisions are subject to a much higher level of transparency than what is applicable to the IOUs. This open and transparent process serves the same purpose as the independent audit requirement that applies to the IOUs. Therefore, the Commission should reject the Joint IOUs' request.

C. The Commission Should Expand the Exemption Provided in Section 1394(b)(2) and Allow a Public Agency With More Than One Electricity Product to Be Exempted From the Audit Requirements If an Attestation is Adopted at a Public Meeting.

Currently, Section 1394(b)(2) is only available to public agencies that offer one electricity product. At the Staff Workshop, Commission staff stated that the rationale for this requirement is that the level of complexity and potential for errors increases in cases where a public agency offers multiple electricity products, such as green pricing options. However, as discussed above, public agencies have a statutory requirement to provide an open and transparent process. These requirements are unaffected by the number of electricity products that a public agency offers to its customers. There is no reason to believe that offering more than one electricity product would impact the ability of the POU to provide the necessary supporting documentation or for the Commission to complete its review. Additionally, the independent audit requirement adds costs that could discourage POUs from offering green electricity products that could otherwise provide customers with greater options and support the state's environmental goals. The Commission should expand Section 1394(b)(2) to include public agencies offering multiple electricity products.

[4] *See* Cal. Gov. Code §§ 6250-6276.48 (for California Public Records Act requirements).

D. The Commission Should Allow Greater Flexibility for the Allowable Methods of Delivery.

The current PSDP requires that customers must affirmatively elect to receive their PCL by email. Because of this requirement, many POUs have some customers that receive their PCL by mail and some by email. Keeping track of how each customer receives its PCL adds an additional level of burden. Changes in technology (*e.g.*, smart phones, social media) have greatly broadened the avenues that electric utilities have for communicating with their customers. Rather than requiring the customers to affirmatively elect to receive the PCL by email, the regulations should allow the Retail Supplier to determine the best delivery method based on their understanding and relationship with their customers.

E. An Offering Should Only Be Considered an Electricity Product If It Is Generally Offered.

Many retail suppliers, including POUs, have individual or "custom" arrangements for large or unique customers within their service territories. If retail suppliers were required to prepare the relevant reporting forms for each of these arrangements, the result would be unduly burdensome and would not provide any value to the public. The PSDP regulations should clarify that an offering should only be considered to be an "electricity product" if it is generally offered and available to all customers, such as the standard utility power mix or a voluntary mix that all customers have the option of accepting.

F. The Non-California Eligible Renewables Fuel Category May Lead to Customer Confusion.

CMUA is concerned by the new proposal to create a fuel category applicable to multi-jurisdictional utilities for their renewable resources that are eligible in another state's RPS program, but not eligible for California's RPS. It is not clear what resource types would fall into this category. Because no technology type is identified, this new provision could lead to

confusion for customers that are comparing their own utility's PCL against a multi-jurisdictional utility's PCL. For example, it may be possible for the generation from a single large hydroelectric generating facility to be listed under the "large hydroelectric" fuel category for a POU while it may be listed as non-California Eligible Renewable for a multi-jurisdictional utility. CMUA recommends that the Commission exercise caution and closely consider the impacts of this potential change.

G. The Differing Definitions of the Term "Electricity Products" May Lead to Confusion.

The term "electricity product" has a different meaning in the PSDP than it does in the Commission's *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*.[5] While these two regulations are distinct, there is significant overlap. The misalignment between between the RPS program and the PSDP is already a source of confusion for customers. Using the same term with differing definitions may exacerbate this confusion. The Commission should consider changes in terminology or other solutions to reduce this potential for confusion.

H. The Commission Should Make the Actual Forms and Templates Available Before the Regulations Are Adopted.

Public Utilities Code Section 398.5(c) requires the Commission to "specify guidelines and standard formats, based on the requirements of this article and subject to public hearing, for the submittal of information pursuant to this article."[6] Previous PSDP rulemakings have made available the actual PCL template and other PSDP forms proposed for approval. However, in this rulemaking, there is only a single reference that "stipulate the mandatory use of the PCL template provided by the energy Commission on its website and include guidance for inputting a

[5] *See* 20 CCR § 3201(j).
[6] Initial Statement of Reasons at 10.

retail supplier's fuel mix into the template."[7] The actual template is not part of the rulemaking process, and therefore, retail suppliers have no opportunity to comment on either the layout or underlying computations of the template. The Commission should make this information public, and provide an opportunity to comment, before its adoption.

I. The Commission Should Take Additional Steps to Align the RPS Program with the PSDP.

There are some immediate steps that the Commission can take to better coordinate both the RPS program and PSDP to avoid reduce unnecessary confusion. For example, under the Proposed Modifications, it is possible for a 35 MW generating facility to qualify as "Eligible Hydroelectric" pursuant to California Public Utilities Code section 399.12(e)(1)(D) and also meet the definition of "Large Hydroelectric" under the section 1391(k)[8] of the PSDP regulations. Within the scope of its statutory authority, the Commission should better align the definitions applicable to the PSDP with the definitions applicable to the RPS to avoid scenarios like this where resources may fall in multiple categories.

Additionally, the Commission should consider changes to PSDP deadlines and reporting forms/templates to better align with the RPS deadlines and forms/templates. Much of this information is duplicative and better coordination could significantly reduce the potential for errors and the burden on utility staff.

//

//

//

[7] Initial Statement of Reasons at 10.

[8] *See* Section 1391(k) ("'Large hydroelectric' means the power source created when water flows from a higher elevation to a lower elevation and that is converted to electrical energy in one or more generators at a single facility, the sum capacity of which exceeds 30 megawatts.").

III. CONCLUSION

CMUA appreciates the opportunity to provide comments on the Proposed Modifications.

Dated: February 5, 2016

Respectfully submitted,

Justin Wynne
Braun Blaising McLaughlin & Smith PC
915 L Street, Suite 1480
Sacramento, CA 95814
(916) 326-5813
wynne@braunlegal.com

Attorneys for the
California Municipal Utilities Association