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on the Pre-Rulemaking Amendments to the Power Source Disclosure Program

Additional submitted attachment is included below.

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California Energy Commission
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RE: Initial Comments of the Joint Publicly Owned Utilities on the Pre-Rulemaking Amendments to the Power Source Disclosure Program [CEC Docket #21-OIR-01]

Dear Ms. Lee,

The California Municipal Utilities Association ("CMUA"), Northern California Power Agency ("NCPA"), and Southern California Public Power Authority ("SCPPA") (collectively the "Joint POUs") respectfully submit these initial comments to the California Energy Commission ("Commission") on the *Pre-Rulemaking Amendments to the Power Source Disclosure Program* ("Proposed Regulations"), issued on December 6, 2021, and the Pre-Rulemaking Workshop on Updates to the Power Source Disclosure Regulations ("Workshop"), held on December 7, 2021. The Joint POUs appreciate the opportunity to review and provide initial input on both the Proposed Regulations as well as the scope of issues to be addressed in this rulemaking.

As an initial matter, the Joint POUs understand that the Commission has proposed an accelerated schedule for adopting these regulations and that the intended scope for this proceeding is narrow. However, during the Workshop, Commission staff indicated that they have no near-term plans to open a subsequent rulemaking to address any outstanding issues not addressed in this rulemaking. Therefore, the Joint POUs urge the Commission to consider expanding the scope of this proceeding to the extent it is necessary to address any identified errors or areas of potential confusion in either the Power Source Disclosure ("PSD") Regulations or the Power Content Labels ("PCLs").

The following sections provide the Joint POUs' initial positions on the some of the key issues raised in the Proposed Regulations.

I. Section 1394.1 (b)(2) – Deadline for Submitting Power Content Label to Commission.

Assembly Bill ("AB") 242 (stats. 2021) extended and modified the annual PSD disclosure deadlines for retail sellers to provide PCLs to their customers. Prior to AB 242, the deadline for providing the annual PCL disclosure to customers was the end of the first full billing cycle for the third quarter of the year, which can be as early as August 1. AB 242 pushed this deadline back, requiring that retail sellers post their annual PCL disclosure to their website by October 1 and then provide the annual PCL disclosure to customers in written materials by the end of the first full billing cycle in the fourth quarter of the year. This change to the law was strongly supported by the publicly owned utility ("POU") community because it makes important changes to the PSD schedule, as described further below.

However, in the Proposed Regulations, Commission staff have included an additional reporting requirement that is not part of AB 242 or any other statutory provision. Section 1394.1 (b)(2) of the Proposed Regulations would additionally require that all retail sellers provide their PCL to the Commission by September 1 of each year. For the reasons described below, the Joint POUs strongly oppose this proposal and recommend that the Commission strike the entire relevant sentence from Section 1394.1 (b)(2).

A. A September 1 PCL Reporting Deadline is Contrary to the Intent of AB 242.

As described above, AB 242 extended the deadline for when retail sellers must provide the PCL annual disclosures to customers. The purpose of this extension was expressly stated in the relevant legislative history. For example, the Final Assembly Floor Analysis for AB 242 includes the following explanation:

> Electricity retailers are required to disclose [PCLs] to customers at the end of the third quarter of each year, e.g. as early as August 1 for a 30-day billing cycle starting July 1. Utilities must also audit their data and submit data verification to the CEC by October 1st, with intermediary deadlines for this process beginning in June 1. ***The timing of the CEC and electricity retailer's verification process present challenges for electricity suppliers in disclosing accurate information to customers by the existing deadline.*** This bill changes the disclosure deadline to October 1st, which aligns with the deadline for data verification by electric retail suppliers.[1]

[1] AB 242 Assembly Floor Analysis, September 3, 2021 (emphasis added).

The Final Senate Floor Analysis for AB 242 similarly finds that the prior timeline presented "challenges for suppliers in disclosing the most accurate information . . . ."[2] The Final Senate Floor Analysis goes on to note that NCPA supports the extension provided by AB 242 because

> it can take two-three months for both the CEC's aggregation of the statewide data and a local publicly owned utility's process for obtaining governing body approvals and attestations. This change in [AB 242] maintains all existing requirements of the program, but adjusts the reporting timeframe by when the information is ultimately disclosed to customers.[3]

AB 242 clearly chose October 1 as the deadline for retail sellers to post their PCL(s) to their website because that is the minimum amount of time that is needed to resolve the challenges associated with the prior schedule. As noted in the legislative history, this additional time period is needed so that the Commission's aggregated statewide data will be available, there will be time for the POU governing board attestation and verification process, and to accommodate other necessary data, such as from the Air Resources Board's Mandatory Reporting Regulation ("MRR") process. Requiring that retail sellers provide their PCLs to the Commission a full month in advance of the October 1 deadline is contrary to the purpose and intent of AB 242.

B. Providing PCLs to the Commission Early Does Not Provide a Sufficient Benefit.

As described by Commission staff during the Workshop, the purpose for providing PCLs to the Commission prior to the October 1 deadline is to allow Commission staff to review the PCLs for any errors. However, there are a number of reasons why such a review will not provide a sufficient benefit. The minimal benefit that this additional review is likely to have does not outweigh the significant additional burden that would result from this accelerated reporting requirement.

First, the PCL content and format requirements are exceedingly clear at this point, and it is very unlikely that a retail seller will include incorrect data or prohibited language in a PCL. Therefore, this review is unlikely to catch any errors that need corrections. Second, it is unlikely that Commission staff will have time for a meaningful review of every single retail seller's PCL in the time period between September 1 and October 1. For 2019, there were 88 retail sellers that provided PCLs and this number will continue to grow as more Community Choice Aggregators become operational. Rather than rushing a review process, the Commission should simply ensure that the requirements for PCLs are clear.

C. Retail Sellers are Already Able to Seek Informal Input on their PCLs.

As proposed, the Commission staff review process would be an informal one. There is no discussion in the Proposed Regulations of any approval or adoption of the retail seller PCLs by the

[2] AB 242, Senate Floor Analysis, August 28, 2021.
[3] *Id.*

Commission. Instead, our understanding is that Commission staff would simply reach out to the individual retail seller to identify some error or deficiency. Currently, retail sellers are free to request that Commission staff provide an informal review of PCLs. For any retail seller that has a concern about anything in their PCL, they are free to request an informal review today. However, this early review process should not be mandatory for all retail sellers.

II. Section 1394.2 (a)(2) – Elimination of the Requirement for Public Agency Governing Boards to Attest to the Veracity of the Power Content Labels.

Under the current PSD Regulations, a retail seller that is a public agency is not required to meet the otherwise applicable audit requirements if the retail seller's board of directors attests to the veracity of both the PSD annual report and the PCL. The requirement to attest to both the annual report and the PCL presents some challenges because the annual report is submitted by June 1, while the PCL is prepared later in the year. Further, it is not clear why the board of directors must attest to the veracity of the PCL because the relevant data in the PCL is also included in the annual report.

The Proposed Regulations would eliminate this additional burden by deleting the requirement for the retail seller board of directors to attest to the veracity of the PCL. The Joint POUs strongly support this proposal.

III. Section 1394.2 (a) – Conflict Between Audit Requirements and New AB 242 Deadlines.

As described above, AB 242 changed the relevant deadlines for the annual PCL disclosures to customers. Retail sellers will now be required to post their annual disclosure to their website by October 1 and then provide the annual disclosure to customers in written material by the end of the first full billing cycle in the fourth quarter of the year. However, this creates a conflict with the audit requirements in Section 1394.2 (a). Specifically, retail sellers that are not utilizing the exemption under Section 1394.2 (a)(2) will need to provide an audit report by October 1 of each year that includes "proof of service of the annual power content label to customers." Similarly, Section 1394.2 (b)(2) requires the auditor to review the annual PCL and compare it to the data in the annual report. Because retail sellers will not be providing the annual PCL disclosure to customers until the ***end*** of the first full billing cycle in the fourth quarter of the year, it will be impossible for the auditor to provide this proof of service or to perform this comparison by October 1.

The Commission must address this conflict in the PSD deadlines. The Joint POUs recommend that the deadline for the audit report, or at least the audit report elements that require the review of the PCL, be moved to December 31 of each year.

IV. Section 1394 (b)(2)(A) – Guidance on Report of Unbundled Renewable Energy Credits.

The Proposed Regulations include changes to the regulatory language to align with the guidance provided by the Commission in its March 25, 2021 *Regulatory Advisory, Clarification of Power Source Disclosure Reporting Requirements* regarding the reporting of unbundled renewable energy credits. The Joint POUs agree with the incorporation of these changes in the PSD Regulations and support their adoption.

V. Section 1393.3 (a)(6) – Methodology to Reconcile Specified Purchases with Retail Sales for Over-Resourced Retail Suppliers.

The Joint POUs remain concerned that the methodology adopted in the last rulemaking to reconcile specified purchases with retail sales does not accurately represent the power mix for retail suppliers that have contractually procured more resources than needed to meet retail sales. The result is a PCL that inflates the contribution of certain resource types relative to others, regardless of the retail supplier's procurement decisions.

The adopted methodology in the current regulations relies on an assumption that retail suppliers would dispatch, in order of preference, renewable and zero-GHG resources, followed by coal, followed by natural gas generation and then unspecified power. This assumption is not accurate. In actual market operations, while the renewables are self-scheduled (not subject to market dispatch) to serve the retail load, coal and natural gas resources are bid into the wholesale market the same way, and respond to market dispatch signals the same way, to serve the demand of the balancing area as a whole. Stacking one fossil fuel resource type first towards retail sales severely skews the retail portfolio. Instead, all fossil fuel resources should be treated the same way on the PCL.

In the Final Statement of Reasons, the CEC suggested it is reasonable to allow retail suppliers to assign preferred resources, like renewables and large hydro, to their retail sales; however, when it comes to fossil fueled resources, the CEC concluded it is more appropriate to assign coal preferentially over natural gas, ostensibly to prevent retail sellers from "masking" the use of higher-emitting resources through over-procurement. This concern is misplaced. As the state moves toward the 100 percent clean electricity policy, POUs are not seeking to further procure non-renewable resources, much less pass them off as lower emitting resources. Over-procurement by POUs has most often been the result of long-term legacy contractual or ownership obligations with non-renewable resources, coupled with statutorily mandated procurement of renewables.

To ensure the PCL most accurately represents the resources procured on behalf of a retail supplier's customers, the Joint POUs respectfully request that the CEC reconsider the methodology in Section 1393 (a)(6).

VI. Conclusion

The Joint POUs appreciate the opportunity to provide these initial comments to Commission staff and look forward to engaging with staff in this proceeding. The Joint POUs thank Commission staff for the time and attention to these comments.