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**NCPA Comments on PSD Pre-Rulemaking Workshop**

*Additional submitted attachment is included below.*

**BEFORE THE CALIFORNIA ENERGY COMMISSION**

**In the matter of:  
Rulemaking to Amend Regulations Governing the  
Power Source Disclosure Program**

**Docket No. 21-OIR-01**

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**NORTHERN CALIFORNIA POWER AGENCY  
COMMENTS ON STAFF PRE-RULEMAKING WORKSHOP ON  
UPDATES TO THE POWER SOURCE DISCLOSURE REGULATIONS**

The Northern California Power Agency<sup>1</sup> (NCPA) submits these comments to the California Energy Commission (Commission) on the Staff Pre-Rulemaking Workshop on Updates to the Power Source Disclosure Regulations (Workshop) held on December 7, 2021. NCPA appreciates the opportunity to provide these comments on proposed change to the Power Source Disclosure (PSD) regulation. These comments address the limited issue of proposed amendments to the PSD regulation to incorporate the revised statutory deadlines set forth in Assembly Bill (AB) 242 (Holden, Chapter 228, Statutes of 2021). NCPA is also a signatory to the Joint POU comments, and incorporates those comments, herein. NCPA looks forward to engaging with Commission staff and stakeholders on further proposed amendments during the rulemaking process.

**AB 242 REQUIRES ANNUAL DISCLOSURES TO BE MADE BY OCTOBER 1 OF EACH YEAR**

The PSD regulation should not be amended to include the proposed September 1 due date for retail suppliers to provide a Power Content Label (PCL) to the Commission. Requiring the submission to the Commission prior to the October 1 deadline set forth in AB 242 is not only contrary to the express statutory language, but technically infeasible and contrary to the very basis for the statutory amendments.

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<sup>1</sup> NCPA is a nonprofit California joint powers agency established in 1968 to construct and operate renewable and low-emitting generating facilities and assist in meeting the wholesale energy needs of its 16 members: the Cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, Shasta Lake, and Ukiah, Plumas-Sierra Rural Electric Cooperative, Port of Oakland, San Francisco Bay Area Rapid Transit (BART), and Truckee Donner Public Utility District—collectively serving nearly 700,000 electric consumers in Central and Northern California.

During the Workshop, staff discussed the proposed changes to §1394.1(b)(2) of the PSD Regulation, regarding retail disclosures to customers. In particular, staff suggested proposed changes that would:

- create a new deadline of September 1 of each year for submitting the PCL to the Commission;
- require retail sellers to provide a written PCL to customers by the end of the first complete billing cycle for the fourth quarter of each year; and
- require retail sellers to display the PCL on the retail supplier's website by October 1 of each year.

Per the Staff Presentation, the rationale for these changes is the need to implement the due dates directed by AB 242. AB 242 modified Public Utilities Code Section 398.4(c) to remove the previous requirement that the annual disclosures be made “by the end of the first complete billing cycle for the third quarter of the year,” and replacing it with a requirement that the disclosures be made by “October 1 of each year.” The statutory change was necessary to allow retail sellers sufficient time to prepare and disseminate the PCL, which was not practicable under the previous provisions. NCPA has long supported the change, and detailed in the last rulemaking the reasons why the additional time was necessary to ensure the accuracy and usefulness of the disclosure.

Prior to the statutory amendment, once the retail seller received the mandatory Commission-issued template, they must then go through the necessary internal processes to collect the data and timely complete the form. As NCPA and several publicly owned utilities stressed in the last rulemaking, it was simply not logistically possible to complete the label earlier. The Commission acknowledged the concerns raised by stakeholders during the last rulemaking, going so far as to revise their own proposal for an August 30 deadline to publish the PLC, reverting instead to the statutory language, noting that “constraints on the power content label disclosure deadline are based on statutory requirements.” (FSOR, p. 53)<sup>2</sup> The statutory amendments adopted in AB 242 explicitly recognize these constraints, and make the changes noted above.

NCPA is supportive of the proposed regulatory change that would recognize the October 1 publication deadline set forth in PUC 398.4(c), as well as the proposed amendment to require that the PCL be provided to customers in written promotional materials by the end of the first

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<sup>2</sup> Final Statement of Reasons, Modification of Regulations Governing the Power Source Disclosure Program (FSOR), Docket No. 16-OIR-05, OAL File No. Z-2019-0827-02; Posted May 8, 2020.

complete billing cycle for the fourth quarter of the year. These suggested amendments to the PSD Regulation are consistent with the statutory amendments in AB 242. However, nothing in AB 242 directs that PCLs be provided to the Commission by September 1.

Based on staff comments during the Workshop, it is NCPA's understanding that Commission staff is seeking to have the PCL submitted to the Commission prior to the October 1 deadline so that staff can review and verify the information contained in the PCL prior to publication on the retail seller's website. However, this pre-publication review is not required under the statute and hinders the ability of the POU to provide the information in a timely manner; and in any event, the Commission has no authority to alter the disclosure deadline to a date outside the statutory requirement. (*See*, FSOR, p. 53) Requiring an earlier submission date is contrary to the express statutory amendments that moved the PCL publication date from the "first billing cycle of the third quarter" to "October 1 of each year". This timeframe was determined, by the Legislature, to be necessary, and as the Commission itself has noted, "[t]he deadline for retail suppliers to disclose Power Content Labels is established in statute under Public Utilities Code section 398.4(c)." (ISOR, p. 28)<sup>3</sup> During the last rulemaking, several stakeholders, including NCPA, sought to have this deadline moved for practical reasons; in response to those comments, the Commission concluded that it has no authority to extend the disclosure deadline to a date that falls outside this window and so could not establish a later date as requested by some. (*See*, FSOR, p. 53) Likewise, just as the Commission has no authority to extend the disclosure deadline set forth in statute, the Commission similarly lacks the authority to arbitrarily establish an earlier date for submission of the PCL.

In the previous rulemaking, the Commission had proposed requiring retail seller to submit the PCL by August 30 of each year; in response to stakeholder, comments, however, the Commission revised this proposal, noting that "incorporating this provision exactly as written in statute better serves program and stakeholder needs." (FSOR, p. 6) Inexplicably, however, the Commission has resurrected this proposal, notwithstanding the fact that nothing in the record of the past rulemaking or AB 242 provides a legal or practical basis for reasserting this earlier deadline.<sup>4</sup> As such, the proposed modifications to the PSD Regulation that would create a

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<sup>3</sup> Initial Statement of Reasons, Modification of Regulations Governing the Power Source Disclosure Program California Energy Commission (ISOR), Docket No. 16-OIR-05, September 2019.

<sup>4</sup> As detailed in the FSOR, multiple stakeholders commented in opposition to the Commission's initial proposal to require that PCLs be provided to customers and the Commission by August 30 of each year; the proposal to provide

requirement for retail sellers to submit the PCL to the Commission a full month prior to the statutory deadline should be removed from consideration.

NCPA appreciates the Commission's pre-rulemaking workshop, and the opportunity to provide these comments, and respectfully requests that the Commission modify the PSD Regulation consistent with the express statutory provisions of AB 242. Please do not hesitate to contact the undersigned or Scott Tomashefsky at 916-781-4291 or [scott.tomashefsky@ncpa.com](mailto:scott.tomashefsky@ncpa.com) with any questions.

Dated this 21<sup>st</sup> day of December 2021.

Respectfully submitted,



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the PCL to the Commission by September 1 of each year suffers from all the same infirmities, in addition to be clearly outside of the express language of AB 242.