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California Energy Commission

AMENDED REGULATIONS

Effective October 31, 2016

Power Source Disclosure Program Regulations

California Energy Commission

Edmund G. Brown Jr., Governor



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NOTE TO READERS

This is an unofficial compilation of the Energy Commission's regulations in the California Code of Regulations, title 20, sections 1391 to 1394. It is provided for informational purposes. The official regulations are maintained by the Office of Administrative Law (<http://www.oal.ca.gov/>) and published in the California Code of Regulations.

Division 2. State Energy Resources Conservation and Development Commission

Chapter 3. Data Collection

Article 5. Electricity Generation Source Disclosure

§ 1391. Definitions.

(a) "**Balancing authority**" means the responsible entity located within California that integrates resource plans ahead of time, maintains load-interchange generation balance within a balancing authority area, and supports interconnection frequency in real time.

(b) "**Electric service product**" means the electrical energy produced by a generating facility that a retail seller offers to sell to consumers in California under terms and conditions specific to an offer or to a tariff. It does not include the provision of electric services on site, sold through an over-the-fence transaction, as defined in Section 218 of the Public Utilities Code, or sold or transferred to an affiliate, as defined in subdivision (a) of Section 372 of the Public Utilities Code.

(c) "**Eligible renewable**" means electrical generation from a facility that is certified pursuant to the Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11)) of the Public Utilities Code, and uses one of the following fuel types:

(1) Biomass and biowaste.

(2) Geothermal.

(3) Eligible hydroelectric.

(4) Solar.

(5) Wind.

(d) "**Energy Commission**" means the State Energy Resources Conservation and Development Commission.

(e) "**Facility**" means one or all generating units at an electric generating station.

(f) "**Fuel type attribute**" means the fuel or technology type used to generate a quantity of kilowatt hours, specified using the categories identified in subsections (d)(1) and (2) of section 1393, and subsection (b)(3)(C) of section 1392.

(g) "**Generating facility output**" means the electrical energy and/or fuel type attribute, denominated in kilowatt hours, that is produced by a specific generating facility.

(h) "**Generating unit**" means a device that converts mechanical, chemical, electromagnetic, or thermal energy into electricity and that:

(1) has an electric output capable of being separately identified and metered;

(2) is located within the Western Electricity Coordinating Council interconnected grid; and

(3) is capable of producing electrical energy in excess of a generation station's internal power requirements.

(i) "**Generator**" means the initial seller of electrical energy produced by a generating unit.

(j) "**Independent System Operator**" or "**ISO**" means the entity that is subject to the requirements of Section 345 et seq. of the Public Utilities Code.

(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.

(l) "**Local publicly owned electric utility that does not utilize the Independent System Operator**" means any of the following entities that owns generation facilities that are not individually metered by the ISO: (1) a municipality or municipal corporation operating as a public utility district furnishing electric services; (2) an irrigation district furnishing electric services; or (3) a joint powers authority that includes one or more of the entities identified in (1) or (2) and that owns generation or transmission facilities, or furnishes electric services over its own or its members' electric distribution system.

(m) "**Net electricity generated**" means electricity generated by any generating facility, less any generation used on-site, sold through an over-the-fence transaction, as defined in Section 218 of the Public Utilities Code, or sold or transferred to an affiliate as defined in subdivision (a) of Section 372 of the Public Utilities Code.

(n) "**Out-of-State power**" means power generated entirely outside the state which is sold for wholesale or retail purposes in California.

(o) "**Pool**" means an entity into which multiple generators deliver generating facility output and out of which multiple retail suppliers purchase generating facility output,

such that buyer and seller may not have knowledge of each other's identities. The amount of electrical energy delivered into and purchased from the pool must be equal, and the amount of fuel type attribute delivered into the pool must be equal to or greater than the amount of fuel type attribute purchased from the pool.

(p) "**Product-specific written promotional materials that are distributed to consumers**" means any paper, electronic, or other media that contain words pertaining to a specific electric service product being advertised or offered and that are distributed to consumers or made available over the Internet. It does not include advertisements and notices in general circulation media.

(q) "**Report electronically**" means to provide files in either a database or spreadsheet format that can be read by the most recent version of either Microsoft™ Excel or Microsoft™ Access.

(r) "**Retail supplier**" or "**retail provider**" means an entity that offers an electric service product for sale to retail consumers in California.

(s) "**Scheduling Coordinator**" means any entity certified by the Independent System Operator for the purposes of undertaking the functions specified in Section 4.5.1 of the Independent System Operator Tariff. (Fifth Replacement FERC Electric Tariff, December 1, 2014)

(t) "**Specific purchase**" means a transaction in which generating facility output is traceable to specific generating facilities by any auditable contract trail or equivalent, such as a tradable commodity system, that provides commercial verification that the generating facility output claimed has been sold once and only once to retail consumers. Retail suppliers may rely on annual data to meet this requirement, rather than hour-by-hour matching of loads and resources. Specific purchases include electrical transactions from facilities owned or controlled by the retail supplier.

(u) "**System Operator**" has the same definition as balancing authority and includes the Independent System Operator as defined in subsection (j) of this section, and each local publicly owned electric utility that does not utilize the Independent System Operator, as defined in subsection (l) of this section.

(v) "**Total California system electricity**" means the sum of all in-state generation and net electricity imports by fuel type.

(w) "**Unspecified sources of power**" means electricity that is not traceable to specific generation sources by any auditable contract trail or equivalent, including a tradable

commodity system, that provides commercial verification that the electricity source claimed has been sold once and only once.

Note: Authority cited: Section 25213, Public Resources Code; and Sections 398.3-398.5, Public Utilities Code. Reference: Sections 25216 and 25216.5, Public Resources Code; and Sections 398.1-398.5, Public Utilities Code.

§ 1392. Generation Disclosure.

(a) Method and Timing of Submissions

(1) All submissions to the balancing authority required by subdivision (a)(2) of this section must be provided to the balancing authority by the generator, either directly or through a Scheduling Coordinator.

(2) Each generator that provides meter data to a balancing authority, either directly or through a Scheduling Coordinator, shall report the information specified in subsection (b) of this section to the balancing authority within forty-five days of the end of each calendar quarter beginning with the quarter ending December 31, 1998.

(b) Content and Format of Submissions to the Balancing Authority

(1) General Information:

(A) Name and telephone number of person to contact about the submission;

(B) Generator name, address, and an identification number provided by the balancing authority, or in the event that the balancing authority does not provide an identification number to the generator, by the Energy Commission;

(C) For each generating facility that generates electrical energy consumed in California, the generating facility name, location, either by street address or by longitude and latitude, and an identification number provided by the U.S. Energy Information Agency, or, in the event that the U.S. Energy Information Agency does not provide an identification number to the generating facility, by the Energy Commission.

(2) Generation Information: Generators shall report electronically the electricity generated in kilowatt hours by hour by each generating facility, in each month of the preceding quarter.

(3) Fuel Information:

(A) For generating facilities using only one type of fuel, generators shall report electronically the type of fuel consumed in the preceding quarter.

(B) For generating facilities using more than one fuel type, generators shall report electronically the fuel consumed in each month of the preceding quarter as a percentage of the total fuel used for electricity generation.

(C) Fuel shall be reported in the following categories:

1. Eligible renewable, which shall be reported in the following subcategories:

a. Biomass and biowaste

b. Geothermal

c. Eligible hydroelectric

d. Solar

e. Wind

2. Coal

3. Natural gas

4. Large hydroelectric

5. Nuclear

6. Other

(c) Balancing Authority Responsibilities

(1) Subject to the limitations described in subsection (c)(2) of this section, all data provided to the balancing authority pursuant to subdivision (b) of this section will be reported electronically to the Energy Commission either by providing a computer disk containing the information, or by providing electronic access to the information. This access shall be provided to the Energy Commission within 60 days of the end of each calendar quarter.

(2) Limitations on Energy Commission Access:

(A) The balancing authority is not required to provide the Energy Commission with any information submitted under subdivision (b)(3) of this section that specifies the amount of fuel consumed at a generating facility.

(B) The balancing authority is not required to provide the Energy Commission with any information submitted under subdivision (b)(3) of this section for out-of-state power.

(d) The following requirements apply to generation and fuel information that is reported for any generation that is sold in an electric service product for which a claim of specific purchases is made.

(1) The generation and fuel information must be reported from individually metered generating facilities.

(2) If generation or fuel information for electrical energy that is sold in an electric service product for which a claim of specific purchases is made is not reported pursuant to subdivision (a) of this section, the generator shall report electronically the information specified in subdivision (d)(2)(A)-(C) of this section to the Energy Commission by March 1 of each year beginning in 1999 for each generating facility that generated such electrical energy in California. If the information is provided to the Energy Commission in another filing, the generator may submit a statement identifying the filing and section of the filing in which the information is contained in lieu of a separate filing pursuant to this subdivision.

(A) General Information:

1. Name and telephone number of person to contact about the submission;

2. Generator name, address, and an identification number provided by the balancing authority, or in the event that the balancing authority does not provide an identification number to the generator, by the Energy Commission;

3. For each generating facility, the generating facility name, location, either by street address or by longitude and latitude, and an identification number provided by the U.S. Energy Information Agency, or, in the event that the U.S. Energy Information Agency does not provide an identification number to the generating facility, by the Energy Commission.

(B) Net electricity generated by the generating facility in kilowatt hours in the previous calendar year; and

(C) Type of fuel consumed by the generating facility as a percentage of electricity generation in the previous calendar year, using the categories specified in subdivision (b)(3)(C) of this section.

(3) When a retail supplier's claim of specific purchases mandates that a generator comply with the reporting requirements of subdivision (d)(2) of this section, the retail supplier shall inform the generator that he or she must comply with these reporting requirements.

Note: Authority cited: Section 25213, Public Resources Code; and Sections 398.3 and 398.5, Public Utilities Code. Reference: Sections 25216 and 25216.5, Public Resources Code; and Sections 398.3 and 398.5, Public Utilities Code.

§ 1393. Retail Disclosure to Consumers.

(a) For purposes of this section, the following definitions apply:

(1) "Annual disclosure" means the annual disclosure required under Public Utilities Code section 398.4(c).

(2) "Marketing disclosure" means the disclosure required under Public Utilities Code section 398.4(b).

(3) "Power content label" means the information disclosed to consumers pursuant to the format requirements of this section.

(4) "Eligible renewable" means eligible renewable as defined in section 1391 of this article.

(b) Pursuant to Section 398.4 of the Public Utilities Code, each retail supplier shall disclose to consumers the fuel mix of each electric service product that was sold during the previous calendar year, and separately disclose total California system electricity, using the schedule and format specified in this section.

(c) Each retail supplier shall disclose the information required in this section to consumers according to the following schedule:

(1) Marketing disclosures shall be provided in all product-specific written promotional materials that are distributed to consumers, as defined in subsection (p) of section 1391 of these regulations.

(2) Annual disclosures shall be provided by United States mail to customers of the electric service product and to the Energy Commission on or before the end of the first complete billing cycle for the third quarter of the year. Retail suppliers may provide annual disclosures to customers via electronic mail, provided that the customer has consented to receiving electronic mail notice in lieu of service by United States mail. Annual disclosures shall also be displayed on the website of the retail supplier.

(d) Each retail supplier shall disclose the following information in all power content labels about the fuel mix of the electric service product and of total California system electricity:

(1) Fuel mix information shall be provided using the following fuel type categories and in the following order, rounded to the nearest percent:

A. Eligible renewable

B. Coal

C. Large hydroelectric. For the purposes of this section, a pumped storage hydroelectric facility that consumes more electricity than it generates in a reporting year shall specify zero kilowatt hours of net electricity purchased.

D. Natural gas

E. Nuclear

F. Other

G. Unspecified sources of power

(2) The retail supplier shall include the following subcategories within the eligible renewable category:

A. Biomass and biowaste

B. Geothermal

C. Eligible hydroelectric

D. Solar

E. Wind

(3) The calculations identified in this section shall be based on net purchases of all specific purchases and unspecified sources of power acquired during the previous calendar year. Calculations shall be made using the information reported to the Energy Commission in the retail supplier's annual report as outlined in Section 1394 (a)(2)(A)(2).

(4) The fuel mix disclosed by retail suppliers that offer an electric service product to retail consumers in California and one or more other states shall reflect the entire portfolio of resources of that product.

(e) Each retail supplier shall provide disclosures for each electric service product offered using a power content label. The power content label shall use the following format:

(1) All information contained in the power content label shall appear in one place without other intervening material.

(2) Location of the power content label.

(A) If the retail supplier offers materials that consist of more than one page, the power content label or a note telling the customer where the power content label can be found, shall appear on the cover page or the first facing page. If a note is used to tell the customer where the power content label can be found, the note shall appear in a type size no smaller than 10 point.

(B) Notwithstanding the provisions of subdivision (e)(2)(A) of this section, if the promotional materials pertain to more than one electric service product and contain multiple pages, the power content label for each product may appear on the page discussing that electric service product.

(3) Each retail supplier shall use the power content label template provided by the Energy Commission on its website at <http://www.energy.ca.gov/pcl/> to generate its power content label. The retail supplier shall input its fuel mix percentages in the fields in the column labeled “[year] Power Mix.” The final column shall contain California total system power. At the bottom of the box containing the power content label, the following note shall appear: “For specific information about this electricity product, contact [Company Name] [Company Phone Number]. For general information about the Power Content Label, contact the California Energy Commission at 1-800-217-4925 or www.energy.ca.gov/pcl/”, where “Company Name” is the name of the retail provider. The format of the power content label may not be altered by the retail supplier.

Note: Authority cited: Section 25213, Public Resources Code; and Section 398.4, Public Utilities Code. Reference: Sections 25216 and 25216.5, Public Resources Code; and Section 398.4, Public Utilities Code.

§ 1394. Annual Submission to the Energy Commission.

(a) Retail Supplier Report.

(1) On or before June 1 of each year, each retail supplier shall provide a filing to the Energy Commission, providing the information identified in subdivisions (a)(2)(A)-(D) below for each electric service product.

(A) Retail suppliers must provide this information on the Annual Report forms provided by the Energy Commission.

(B) The retail supplier must provide one paper copy, with an original signature, or an electronic copy of the original document containing the original signature.

(C) The report must include an attestation, signed by an authorized agent of the retail supplier under penalty of perjury, that the generating facility output claimed by the retail supplier as a specific purchase during the

previous calendar year was sold once and only once to retail customers of that retail supplier, and that the information provided in the report is true and correct.

(D) All fuel type attribute information shall be provided using the fuel type categories identified in subdivisions (d)(1) and (2) of section 1393.

(E) Retail suppliers may provide the information specified in subdivisions (a)(2)(A)-(D) of this section by providing a reference to the date and title of a filing made to the Energy Commission containing the information specified in that subsection.

(2) Informational Requirements.

(A) Purchases

1. For each source of generating facility output from which a specific purchase was made, the retail supplier must include the following information: facility name or pool name, fuel type, state or province the facility is located in, facility or pool number provided by the U.S. Energy Information Agency (EIA), WREGIS, or the Federal Energy Regulatory Commission (FERC), gross kilowatt hours purchased, kilowatt hours resold or consumed on-site, and the resultant calculation of net specific purchases. This information shall be provided on the current version of Schedule 1 prepared by the Energy Commission.
2. All specific purchases and unspecified sources of power shall be reported on Schedule 1 as individual line items of gross kilowatt hours of purchased electricity and net kilowatt hours of purchased electricity, which shall be calculated by subtracting resold and consumed electricity. All reported purchases shall be denominated in thousands of kilowatt hours.
3. Retail suppliers who make specific purchases obtained from a pool must reference a filing made no later than June 1 of the current calendar year to the Energy Commission by the pool that includes the following information:
 - a. For each generator that provided generating facility output into the pool, the facility name, fuel type, state or

province the facility is located in, facility number provided by EIA, WREGIS, or FERC, and total number of kilowatt hours provided into the pool. This information shall be provided on the current version of Schedule 3 prepared by the Energy Commission.

b. For each purchase of generating facility output from the pool, the amount of kilowatt hours purchased by each purchaser by fuel type. This information shall be provided on the current version of Schedule 4 prepared by the Energy Commission.

(B) Retail Sales: The retail supplier filing shall include each electric service product name, the kilowatt hours, in thousands, sold for each product from specific purchases by fuel type and unspecified sources of power, and total retail sales. This information shall be provided on the current version of Schedules 1 and 2 prepared by the Energy Commission.

(C) Comparison of Total Purchases and Sales: The retail supplier filing shall include total net specific purchases by resource type and total net purchases of unspecified sources of power, consistent with subdivision (a)(2)(A) above, minus total retail sales for all products, consistent with subdivision (a)(2)(B) above. This information shall be provided on the current version of Schedule 2 prepared by the Energy Commission.

(D) Power Content Label: The retail supplier shall provide to the Energy Commission a copy of each marketing and annual disclosure provided to customers pursuant to subdivisions 1393 (c)(1) and (2).

(b) Agreed-upon Procedures

(1) By October 1 of each year, all retail suppliers shall provide a report prepared by an auditor who has conducted the procedures identified in Appendix A of these regulations. The report shall contain a summary of the results of the procedures and a proof of service of the annual power content label to customers.

(2) A retail supplier that is a public agency providing electric services is not required to comply with the provisions of subdivision (b)(1) for one electric service product if the board of directors of the public agency approves at a public meeting the submission to the Energy Commission of an attestation of the veracity of the annual report. A report in accordance with subdivision (b)(1) shall

be submitted for each additional electric service product it offers to its customers.

(c) The Energy Commission may on its own motion, or as a result of a request from a member of the public or other agency, investigate electricity transactions identified by a retail supplier to determine whether the transactions are traceable to specific generating facilities and whether they provide commercial verification that the electricity source claimed has been sold once and only once to retail consumers. In conducting its investigation, the Energy Commission may require the production of the service lists used to comply with the requirements of subdivision (b) of this section, as well as commercial documents, such as contracts, invoices, the verification procedures performed pursuant to subdivision (b) of this section, and attestations.

Note: Authority cited: Section 25213, Public Resources Code; and Section 398.5, Public Utilities Code. Reference: Sections 25216 and 25216.5, Public Resources Code; and Section 398.5, Public Utilities Code.

APPENDIX A: AGREED-UPON PROCEDURES

(a) This appendix describes the agreed-upon procedures that retail suppliers shall use to comply with the requirements of subdivision (b)(1) of Section 1394 of these regulations. These procedures shall be performed for each electric service product for which specific purchases were made during the previous calendar year, unless the exemption identified in subdivision (b)(2) of Section 1394 of these regulations is applicable. The procedures in subdivision (c)(1), and (c)(2) of this Appendix are applicable to all transactions relating to the fuel mix of the product, and the procedures in subdivision(c)(3) are applicable to the power content labels disclosing the fuel mix of the product. The procedures described in subdivision (c)(4) are also applicable to transactions in which the purchase of generating facility output is traced from a specific generating facility to a retail customer through a pool.

(b) The retail supplier must engage an independent accountant or certified internal auditor to perform the procedures identified in subdivision (c) below, in accordance with the American Institute of Certified Public Accountants (AICPA) Statements on

Standards for Attestation Engagements, Section 600 or under Statements on Auditing Standards, Section 622. The accountant shall provide a report to the Energy Commission no later than October 1 of each year summarizing the results of the procedures.

(1) The accountant must be a Certified Public Accountant in good standing with the AICPA or a Certified Internal Auditor in good standing with the Institute of Certified Internal Auditors.

(2) The accountant or auditor may use sampling techniques following the guidance set forth in the AICPA AU Section 350, *Audit Sampling*, provided that the sample size is determined using a confidence level of 90 percent, a tolerable deviation of 10 percent, and an expected deviation rate of 3 percent, and the total population size is determined. The program participant will need to determine the population size (estimates are acceptable). The sample size shall be determined by using a statistical sampling program, and sample selection shall be made on a random basis using a random number generator. In any event, no more than 50 percent (50%) of the selected transactions may relate to any one month unless more than 50 percent (50%) of the population relates to the same month. All parameters and deviations used and the sample size must be described in the report. If the accountant chooses not to use sampling techniques, testing of 100 percent (100%) of the population must be performed.

(c) Agreed-Upon Procedures

(1) Purchases: The auditor shall review the information used to prepare Schedules 1 and 2 and perform the procedures identified below, noting any exceptions.

(A) The auditor shall agree the specific purchases and resales/self-consumption by facility or pool name, facility or pool number provided by EIA, WREGIS, or FERC, and kilowatt hours and fuel type from the information used to prepare Schedule 1 to Schedule 1. The auditor shall agree the purchases of unspecified sources of power and resales/self-consumption from the information used to prepare Schedule 1 to Schedule 1. The auditor shall also test the mathematical accuracy of Schedule 1.

(B) The auditor shall select a sample of purchases from the information used to prepare Schedule 1 using the sampling guidelines discussed in subdivision (b)(2) of this Appendix, and for each purchase in the sample perform the following procedures:

1. Agree the facility or pool name, facility or pool number provided by EIA, WREGIS, or FERC, kilowatt hours and the fuel type from the invoice to the information used to prepare Schedule 1.

2. For facilities owned by the retail supplier, agree the kilowatt hours with meter readings made by an independent third party, or confirm that the retail supplier has another internal auditing procedure that assures facility production agrees to production claims.

3. Agree the date of generation from the invoice to the reporting period of the information used to prepare Schedule 1.

(C) The auditor shall agree the net kilowatt hours purchased shown on Schedule 1 to net purchases shown on Schedule 2. Note as an exception if any explanation of the difference in net purchases and sales was improperly excluded.

(2) Sales: The auditor shall review the information used to prepare Schedules 1 and 2, and perform the procedures identified below, noting any exceptions.

(A) The auditor shall agree the total retail sales information used to prepare Schedule 1 to total retail sales shown on Schedule 1.

(B) The auditor shall agree the total retail sales shown on Schedule 1 to total retail sales shown on Schedule 2. The auditor shall also check the mathematical accuracy of Schedule 2.

(3) Labels

(A) The auditor shall obtain a copy of the annual power content label provided to customers for each product pursuant to subdivision (b) of Section 1393 of this chapter. The auditor shall calculate the fuel and technology mix of the total annual retail sales for the product using the information provided in Schedule 2 and the equation found in subdivision (a)(2)(A)(2) of Section 1394 of this chapter. The auditor shall then compare these percentages to those identified for the actual power mix on the annual label. The auditor shall note any exceptions greater than 1%.

(4) Pools

(A) Purchases: The auditor shall obtain the information used to prepare Schedule 3 and perform the procedures identified below, noting any exceptions.

1. The auditor shall agree the purchases by facility name, facility number provided by EIA, WREGIS, or FERC, and kilowatt hours and fuel type from the information used to prepare Schedule 3 to

Schedule 3. The auditor shall also test the mathematical accuracy of Schedule 3.

2. The auditor shall select a sample of purchases from the information used to prepare Schedule 3 using the sampling guidelines discussed in subdivision (b)(2) of this section, and for each purchase perform the following procedures:

a. Agree the facility name, facility number provided by EIA, WREGIS, or FERC, and kilowatt hours and fuel type from the invoice to the information used to prepare Schedule 3.

b. For facilities owned by the retail supplier, agree the kilowatt hours with meter readings made by an independent third party, or confirm that the retail supplier has another internal auditing procedure that assures facility production agrees to production claims.

c. Agree the date of generation from the invoice to the reporting period of the information used to prepare Schedule 3.

(B) Sales: The auditor shall obtain the information used to prepare Schedule 4, and perform the procedures identified below, noting any exceptions.

1. The auditor shall agree the sales by purchaser and by fuel type and kilowatt hours from the information used to prepare Schedule 4 to Schedule 4. The auditor shall also test the mathematical accuracy of Schedule 4.

2. The auditor shall select a sample of sales from the information used to prepare Schedule 4 using the sampling guidelines discussed in subdivision (b)(2) of this section, and for each sales compare kilowatt hours of fuel type to a copy of the billing statement and any other records.