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| Filer: | Jordan Scavo |
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Pre-Rulemaking Draft

Pre-Rulemaking Amendments to the Power Source Disclosure Program

**California Code of Regulations
Title 20. Public Utilities and Energy
Division 2. State Energy Resources Conservation and Development Commission
Chapter 3. Data Collection
Article 5. Electricity Generation Source Disclosure**

(Sections 1390 through 1394)

February 2019

§ 1390. Scope.

The regulations in this Article implement the disclosure and reporting requirements established in Article 14 (commencing with section 398.1) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code. Note: Authority cited: Section 25213, Public Resources Code; and Sections 398.3-398.5, Public Utilities Code. Reference: Sections 25216, 25216.5, Public Resources Code; and Sections 398.1-398.5, Public Utilities Code.

§ 1391. Definitions.

“Asset-controlling supplier” means any entity that owns or operates interconnected electricity generating facilities or serves as an exclusive marketer for these facilities even though it does not own them, and is assigned a supplier-specific identification number and greenhouse gas (GHG) emissions factor by the California Air Resources Board for the wholesale electricity procured from its system and imported into California.

(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.

“California balancing authority” is a balancing authority with control over a balancing authority area primarily located in this state. A California balancing authority is responsible for the operation of the transmission grid within its metered boundaries, which is not limited by the political boundaries of the State of California.

“Carbon dioxide equivalent” or “CO₂e” means the number of units of mass of CO₂ emissions with the same global warming potential as one unit of another GHG when calculated using the individual global warming potentials as follows: For 2019 and 2020 data years, the GWP values used for emissions estimation and reporting are as specified in Table A-1 to Subpart A of Title 40, Code of Federal Regulations (CFR) Part 98 as published to the CFR on 10/30/2009, which is hereby incorporated by reference. For data years 2021 and onward, the GWP values are as specified in the Table A-1 to Subpart A of Title 40 Code of Federal Regulations Part 98 as published to the CFR on 12/11/2014, which is hereby incorporated by reference.

“Cogenerator” means a generating unit that produces electric energy and useful thermal energy for industrial, commercial, or heating and cooling purposes, through the sequential or simultaneous use of the original fuel energy and waste heat recovery.

“Custom electricity portfolio” means an electricity portfolio designed specifically for one or more non-residential customers that is not offered in the retail supplier's general marketing materials and that has a discrete combination of resource characteristics, including generator locations, fuel types, and emissions rates.

“Delivered electricity” means electricity from a facility that has one of the following three characteristics:

- 1) has a first point of interconnection within the metered boundaries of a California balancing authority or a first point of interconnection with an electrical distribution system used to serve end users within the metered boundaries of a California balancing authority area;
- 2) is scheduled into a California balancing authority without substituting electricity from another source; or

- 3) is subject to an agreement between a California balancing authority and the balancing authority in which an eligible renewable energy resource is located, executed before the product is generated, to dynamically transfer electricity from that eligible renewable energy resource into the California balancing authority area.

Retail suppliers shall not report behind the meter generation serving onsite load as delivered electricity. Retail suppliers must be able to substantiate delivered electricity through purchase agreements executed prior to generation of the purchased electricity, as well as e-tags for delivered electricity that is imported to a California balancing authority.

“E-tag” means an electronic record that contains the details of a transaction to transfer energy from a source point to a sink where the energy is scheduled for transmission across one or more balancing authority area boundaries. For purposes of this definition, “source point” refers to the generation source of the energy, and “sink” refers to the balancing authority in which the electric load is located.

“Energy Information Administration” or “EIA” means the U.S. Energy Information Administration.

~~(b) “Electric service product”~~ “Electricity portfolio” or “electricity offering” means ~~an electrical energy produced by a generating facility~~ electricity product that a retail supplier ~~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. An electricity portfolio is distinguishable from other electricity portfolios offered by the same retail supplier if it satisfies any of the following criteria:

- (1) Is marketed by the retail supplier as a discrete portfolio;
- (2) Has been given a discrete title or name by the retail supplier;
- (3) Has been assigned a discrete fee or rate by the retail supplier;
- (4) Contains a different proportion of fuel types compared to other portfolios offered by the retail supplier; or
- (5) Is marketed or offered by a third party through the retail supplier’s marketing materials.

~~(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.

“Firmed-and-shaped product” means specified purchases in which substitute electricity, rather than the electricity produced by an eligible renewable generator, is delivered within the year of generation from outside a California balancing authority to a California balancing authority to serve the retail supplier’s load.

~~(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)-(2)~~ and (b)(3) of section 1393, ~~and subsection (b)(3)(C) of section 1392.~~

“Fuel mix” means the assortment of fuel types comprising an electricity portfolio, expressed as percentages.

~~(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.

“GHG emissions intensity of a generator” means the sum of all annual emissions of GHGs associated with a generation source divided by the net annual production of electricity from the generation source.

“GHG emissions intensity of an electricity portfolio” means the sum of all annual emissions of greenhouse gases associated with the generation sources comprising an electricity portfolio divided by the annual retail sales of that electricity portfolio.

~~(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 a hydroelectric generator that is not an eligible renewable 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.

“Mandatory Reporting Regulation” or “MRR” means the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions of the California Air Resources Board, title 17, section 95100, et seq., California Code of Regulations.

~~(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 electricity portfolio 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.

“Renewable energy credit,” or “REC”, means a certificate of proof associated with the generation of electricity from an eligible renewable energy resource, issued through the accounting system established by the Energy Commission pursuant to Section 399.25, that one unit of electricity was generated and delivered by an eligible renewable energy resource.

~~(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.

“Retail Sales” means sales of electricity by a retail supplier to end-use customers over the course of a calendar year, measured in thousands of kilowatt hours. Retail sales do not include self-consumption, defined as consumption by a retail supplier; electricity produced for onsite consumption that was not

sold to a customer by the retail supplier; or losses due to transmission, distribution, power wheeling, or transmission-interconnected energy storage.

~~(f) “Retail supplier” or “retail provider” means an entity that offers an electricity portfolio electric service product for sale to retail consumers in California, and includes investor owned utilities, local publicly owned utilities, community choice aggregators, and electric service providers.~~

~~(g) “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) “Specified Specific purchase” means a transaction in which electricity 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 electricity 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. Specified Specific purchases include electrical transactions from facilities owned or controlled by the retail supplier.~~

“Specified system power of an asset-controlling supplier” means electricity derived from a specific set of generators owned or controlled by an asset-controlling supplier. Purchases of specified system power of an asset-controlling supplier are considered specified purchases if the transactions are documented through an executed contract and e-tags.

“Substitute electricity” means the replacement electricity that is delivered within the year of generation from outside a California balancing authority into a California balancing authority under a contract for a firmed-and-shaped product.

~~(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.~~

“Unbundled REC” means a REC from an eligible renewable energy resource that is not procured as part of the same contract or ownership agreement with the underlying energy from that eligible renewable energy resource; this includes a REC that was originally procured as a bundled product but was subsequently resold separately from the underlying energy.

~~(w) “Electricity from Unspecified sources of power” or “unspecified 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, to a retail consumer.~~

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. Accounting Methodology

(a) General provisions.

(1) To claim the GHG emissions profile of an eligible renewable generator, a retail supplier shall procure electricity and the associated RECs from an eligible renewable generator. Electricity purchases from an eligible renewable generator without the associated RECs shall be classified as unspecified power.

(2) If a retail supplier subsequently resells the RECs associated with eligible renewable electricity that was reported under this regulation in a quantity that exceeds one percent of the annual retail sales of the electricity portfolio, the retail supplier shall submit an amended annual report pursuant to Section 1394 that reclassifies the electricity associated with the resold RECs as unspecified power.

(3) Specified purchases of firmed-and-shaped products reported by a retail supplier are assigned the GHG emissions intensity of the substitute electricity delivered to a California balancing authority.

(4) A retail supplier's purchases of the specified system power from an asset-controlling supplier shall use the most recent GHG emissions intensity assigned to the asset-controlling supplier by the California Air Resources Board pursuant to section 95111 (b)(3) of the Mandatory Reporting Regulation. A retail supplier's purchases of the specified system power of an asset-controlling supplier may be categorized according to the fuel mix of the asset-controlling supplier pursuant to Section 1394 (c); otherwise, such purchases shall be categorized as unspecified power.

(5) Net purchases of each specified purchase and purchase of unspecified power shall be calculated by deducting any wholesale sales from each gross purchase, as expressed in Equation 1 :

$$\text{Equation 1: } NP_i = GP_i - WS_i$$

NP_i = Net purchase i, measured in MWh

GP_i = Gross purchase i, measured in MWh

WS_i = Wholesales sales of gross purchase i, measured in MWh

(6) Wholesale sales of unspecified power in excess of a retail supplier's gross purchases of unspecified power in the reporting year shall be proportionally attributed to each gross purchase that does not meet the definition of eligible renewable, as expressed in Equation 2 :

$$\text{Equation 2: } NP_i = GP_{NR,i} - (WS_{SYS}) \times \left(\frac{GP_{NR,i}}{\sum GP_{NR}} \right)$$

NP = Net purchase, measured in MWh

GP_{NR} = Gross purchase that does not qualify as eligible renewable, measured in MWh

WS_{SYS} = Wholesale sales of system power, measured in MWh

(7) To reconcile the net sum of all specified purchases and unspecified power with the retail sales of each electricity portfolio, all net purchases that do not meet the definition of an eligible renewable shall be proportionally reduced so that the adjusted net sum of all adjusted net purchases equals the retail sales of an electricity portfolio, as expressed in Equation 3:

$$\text{Equation 3: } ANP_i = NP_i - \left(\left(\sum NP \right) - RS \right) \times \left(\frac{NP_i}{\sum NP_{NR}} \right)$$

ANP_i = Adjusted net purchase i, measured in MWh

NP_i = Net purchase i, measured in MWh

NP = Any net purchase, measured in MWh

RS = Total retail sales of an electricity portfolio, measured in MWh

NP_{NR} = Any net purchase of a fuel type that is not an eligible renewable resource, measured in MWh

(b) Fuel Mix Accounting

(1) The fuel mix of an electricity portfolio shall be based on the fuel types of the specified purchases and of unspecified power.

(2) The fuel mix shall be calculated by aggregating adjusted net purchases of each fuel type pursuant to the reconciliation adjustment in Equation 3, and expressed as percentages of the retail sales of the electricity portfolio as follows:

$$\text{Equation 4: } FM_j = \left(\frac{\sum ANP_j}{RS} \right) \times 100\%$$

FM = Percentage of fuel mix corresponding to fuel type j, measured in MWh

ANP = Adjusted net purchase of fuel type j, calculated pursuant to 1393 (a)(7), measured in MWh

RS = Total retail sales of an electricity portfolio, measured in MWh

(3) The fuel mix shall be composed of the following fuel types:

(A) Coal

(B) Natural gas

(C) Nuclear

(D) Large hydroelectric. For the purposes of this regulation, a pumped storage hydroelectric generator shall report the gross electricity purchased as the total generator output minus consumption associated with storage pumping in the previous calendar year. A pumped storage

hydroelectric generator that consumes more electricity than it generates in the previous calendar year shall report zero megawatt hours of gross electricity purchased.

(E) Eligible renewable. Eligible renewable shall be further subcategorized as follows:

(1) Biomass and biowaste

(2) Geothermal

(3) Eligible hydroelectric

(4) Solar

(5) Wind

(F) Unspecified power

(G) Other. This category shall be reserved for fuel types not provided in the reporting forms and power content label.

(4) Multifuel generators, meaning generators that utilize multiple fuel types to generate electricity, shall be classified according to the dominant fuel type used for electricity generation as reported to the U.S. Energy Information Agency (EIA) through Form EIA-923 Power Plant Operations Report (OMB No. 1905-0129), hereby incorporated by reference.

(c) GHG Emissions Accounting

(1) GHG emissions of specified purchases, purchases of firmed and shaped products, and purchases of unspecified power shall be calculated based on electricity delivered to a California balancing authority.

(2) GHG emissions intensities of generators

(A) The Energy Commission shall annually assign a GHG emissions intensity to each generator that delivers electricity to a California balancing authority, and provide the most recent GHG emissions intensities of generators for retail suppliers to use in annual reporting to the Energy Commission pursuant to Section 1394.

(B) For all generators with reported or assigned emissions under MRR, the Energy Commission shall calculate GHG emissions intensities as follows:

$$\text{Equation 5: } EF = \frac{E}{G}$$

Where:

EF = Generator's emissions intensity for the previous calendar year, measured in metric tons CO₂e/MWh

E = Sum of generator's most recent annual GHG emissions as reported under MRR and expressed in metric tons of CO₂e.

G = Generator's net electricity production as reported to MRR and to the EIA, measured in MWh.

(C) For any generators without reported or assigned emissions under MRR, the Energy Commission shall calculate the sum of GHG emissions associated with the generator using heat of combustion data and default emission factors by fuel type pursuant to title 17, California Code of Regulations, section 95111 (b)(2)(C) of the MRR.

A generator's GHG emissions shall be calculated as follows:

$$\text{Equation 6: } E = ST \times HC$$

Where:

E = Generator's GHG emissions for the previous calendar year

ST = Stationary fuel combustion emissions intensity, expressed in metric tons of CO₂, N₂O, or CH₄ per MMBtu

HC = Heat content of fuel combusted for electricity production of a generator for the previous calendar year, expressed in MMBtu

A generator's GHG emissions intensity shall then be calculated by converting emissions to CO₂e and applying the method described in Equation 5.

(D) For any generators without reported or assigned emissions under MRR or reported fuel combustion data to EIA, including new generators and generators located outside the U.S., staff will assign an emissions intensity based on fleet averages by fuel type.

(E) The Energy Commission shall determine the portion of GHG emissions of a cogenerating unit attributable to electricity production in the previous calendar year as follows:

$$\text{Equation 7: } E_e = E_t \times \frac{F_e}{F_t}$$

Where:

E_e = GHG emissions attributable to electricity production

E_t = Total GHG emissions attributable to a generator in the previous calendar year

F_e = Fuel consumed by a generator for electricity production in the previous calendar year, based on data submitted under Form EIA-923 Power Plant Operations Report (OMB No. 1905-0129), hereby incorporated by reference.

F_t = Total fuel consumed by a generator in the previous calendar year, based on EIA data described above

(F) A cogenerating unit's GHG emissions intensity shall then be calculated by applying Equation 5.

(G) For generators with discrete generating units that are owned or contracted to separate retail suppliers, the Energy Commission shall use Equation 5 to calculate GHG emissions intensities for each generating unit.

(3) The GHG emissions intensity of unspecified power shall be assigned the default emissions factor as specified under section 95111(b)(1) of the Mandatory Reporting Regulation.

(4) GHG emissions intensity of an electricity portfolio shall be calculated by dividing the sum of all GHG emissions from specified purchases and unspecified power for the previous calendar year by the retail sales of that electricity portfolio during the previous calendar year. GHG emissions intensity of an electricity portfolio shall be calculated as follows:

(A) Sum all GHG emissions attributable to the electricity portfolio by multiplying the adjusted net purchase of each specified or unspecified purchase of the electricity portfolio by the corresponding emissions factor, then summing the products as follows:

$$\text{Equation 8: } E = \sum (AN_i \times EF_i)$$

Where:

E = Sum of all GHG emissions attributable to the electricity portfolio

AN_i = Adjusted net purchase from generator i or unspecified power pursuant to subdivision 1393 (a)(7).

EF_i = Emissions factor of generator i

(B) Divide the sum of all GHG emissions attributable to the electricity portfolio by the retail sales of the electricity portfolio as follows:

$$\text{Equation 9: } EI_z = \frac{E_z}{RS_z}$$

Where:

EI_z = GHG emissions intensity of electricity portfolio z for the reporting period

$E_z = \text{Sum of GHG emissions attributable to electricity portfolio } z$

$RS_z = \text{Retail sales of electricity portfolio } z$

(d) Excluded GHG emissions

(1) Retail suppliers with specified purchases of renewable firm-and-shaped products under a contract executed prior to February 1, 2018 shall report GHG emissions associated with the substitute electricity pursuant to Section 1393.

(A) When calculating the emissions intensity of an electricity portfolio that includes one or more firm-and-shaped products purchased under a contract executed prior to February 1, 2018, the reporting entity shall provide the emissions in the reporting forms and identify these emissions as excluded from the calculation of emissions intensity. The retail supplier shall furnish a purchase contract substantiating that a firm-and-shaped product meets the requirement above for each annual filing claiming the GHG emissions exclusion.

(B) Retail suppliers with specified purchases of firm-and-shaped products under a contract executed on or after February 1, 2018 shall report GHG emissions according to the source of the delivered electricity pursuant to subdivision (c)(1).

(2) The Energy Commission shall adjust GHG emissions of a local publicly owned utility if the utility demonstrates that it generated zero-GHG electricity in excess of its retail sales and wholesale sales of specified sources in a prior year.

(A) The Energy Commission shall track zero-GHG electricity that meets the definition in subdivision (d)(2) for use in adjusting the GHG emissions of a local publicly owned utility. For each megawatt hour of eligible generation, the Energy Commission shall reduce the GHG emissions of a local publicly owned utility using the default emissions factor for unspecified electricity as specified under the Mandatory Reporting Regulations, title 17, California Code of Regulations, Section 95111(b)(1).

(B) The Energy Commission shall only adjust the disclosed GHG emissions of a local publicly owned utility using zero-GHG electricity that meets the definition in subdivision (d)(2) that was generated on or after January 1, 2017 and that was generated within twenty years of the GHG emissions subject to adjustment.

(C) The Energy Commission shall only adjust the disclosed GHG emissions of a local publicly owned utility using over-generation of zero-GHG electricity that was not resold as a wholesale sale of a specified source.

(D) The Energy Commission shall adjust the GHG emissions of a local publicly owned utility only once for each megawatt hour of over-generation of zero-GHG electricity.

Note: Authority cited: Section 25213, Public Resources Code; and Sections 398.1 and 398.4, Public Utilities Code. Reference: Sections 25216 and 25216.5, Public Resources Code; and Section 398.4, Public Utilities Code.

§ 1394. Data Reporting Annual Submission to the Energy Commission.

~~(a) Retail Supplier Report.~~

~~(a)(1)~~ On or before June 1 of each year, each retail supplier shall ~~submit~~ provide a separate annual report ~~filing~~ to the Energy Commission containing ~~providing~~ the information identified in subdivisions ~~(b)(a)(2)(A)-(D)~~ below for each electricity portfolio electric service product offered the previous calendar year, in accordance with the methodology described in Section 1393. ~~(A)~~ Retail suppliers must submit ~~provide~~ this information on the Annual Reporting forms schedules provided by the Energy Commission.

~~(1)(B)~~ The retail supplier must provide one paper copy of each report, with an original signature, or an electronic copy of the ~~original document~~ report containing the original signature.

~~(2)(C)~~ The report must include an attestation, signed by an authorized agent of the retail supplier under penalty of perjury, that the electricity generating facility output claimed by the retail supplier as a specified 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.

(b) Annual Report

(1) Retail suppliers shall provide the following information for each specified purchase of electricity and for electricity from unspecified sources on the forms provided by the Energy Commission:

~~(A)(D)~~ All fuel Fuel type attribute information shall be provided using the fuel type categories identified in subdivisions ~~(b)(3)-(d)(1) and (2)~~ of section 1393. For purchases of specified system power of an asset-controlling supplier, retail suppliers may use the ACS Purchase Calculator provided by the Energy Commission to determine the appropriate fuel types and quantities.

(B) Electricity purchases and sales information, denominated in thousands of kilowatt hours:

1. Gross kilowatt hours purchased.

2. Kilowatt hours resold at wholesale.

3. Net kilowatt hours of purchased electricity, determined by subtracting resold electricity from gross kilowatt hours of purchased electricity.

4. Adjusted net kilowatt hours of purchased electricity, calculated pursuant to Section 1393 (a)(7).

(C) EIA number:

1. The Energy Commission shall assign identification numbers to use in place of an EIA number for generators without an EIA number, for unspecified power, and for purchases of the specified system power of an asset-controlling supplier pursuant to subdivision (c).

2. For specified purchases of firmed-and-shaped products, the retail supplier shall provide the EIA identification number of the generator that provided substitute electricity delivered to a California balancing authority. If the source of the substitute electricity is unspecified power, the retail supplier shall use the identification number for unspecified power provided by the Energy Commission.

(D) GHG emissions intensity associated with each purchase of electricity as provided by the Energy Commission pursuant to Section 1393 (c)(2).

(E) Total GHG emissions associated with each purchase of electricity, calculated in accordance with Section 1393 (c), and expressed in metric tons of carbon dioxide equivalent (CO₂e).

(F) Additional information for specified purchases:

1. Generator name, generator location (state or province), and generator identification number under the Renewables Portfolio Standard (RPS), if applicable.

2. The retail supplier shall indicate whether the specified purchase qualifies for the excluded GHG emissions provisions pursuant to Section 1393 (d). To qualify for one of the excluded emissions provisions, a retail supplier shall submit supporting documentation, including contracts, and shall meet the provisions specified in Section 1393 (d).

(2) Unbundled RECs:

(A) Quantity of unbundled RECs associated with the electricity portfolio retired during the previous calendar year, denominated in thousands of kilowatt hours.

(B) Generator name, location, fuel type, and RPS ID for each source of retired unbundled RECs.

(3) Aggregated Data:

(A) Total adjusted net purchase for each fuel type, aggregated from information reported on Schedule 1.

(B) Total retail sales of the electricity portfolio.

(C) Percentage of retail sales for each fuel type, rounded to the nearest whole number.

(D) The GHG emissions intensity of the electricity portfolio pursuant to the calculation method specified in Section 1393 (c)(4).

(E) Total retired unbundled RECs, expressed as a percentage of retail sales.

(c) Asset-Controlling Suppliers. An asset-controlling supplier may have its wholesale sales of system power classified as a specified purchase if it complies with the following reporting requirements:

(1) The asset-controlling supplier shall report to the California Air Resources Board under the Mandatory Reporting Regulation pursuant to title 17, California Code of Regulations, section 95111 (f) and have an emission factor posted for use on the California Air Resources Board website; and

(2) The asset-controlling supplier shall report the fuel mix of its specified system mix using the fuel types designated under Section 1393 and corresponding to the asset-controlling supplier's most recent reporting to the Mandatory Reporting Regulation, and provide an attestation by its governing board affirming that the report is accurate.

~~(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).~~

§ ~~1394.11393~~. 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).~~

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

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

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

~~(a)~~ Pursuant to Section 398.4 of the Public Utilities Code, each retail supplier shall ~~disclose~~ provide to consumers a power content label that discloses the fuel mix and GHG emissions intensity of each electricity portfolio electric service product that was sold during the previous calendar year, and separately discloses the fuel mix and GHG emissions intensity of total California system electricity, using the schedule and format specified in this section.

(1) Information disclosed on each power content label shall be consistent with the information reported to the Energy Commission on Schedule 3 of the annual report for each electricity portfolio.

(2) Any marketing or retail product claim by a retail supplier related to the GHG emissions intensity of an electricity portfolio shall be consistent with the GHG emissions intensity disclosed on the relevant power content label. Retail suppliers may provide additional information to customers describing other actions related to greenhouse gases that are unrelated to the electricity portfolio.

(3) The Energy Commission shall provide fuel mix and GHG emissions intensity of California's total system electricity for inclusion on the power content label.

~~(b)~~ ~~(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~~ served by each

electricity portfolio ~~electric service product~~ and to the Energy Commission on or before August 30. ~~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 in an easily marked and identifiable location.

~~(c) (d)~~ Each retail supplier shall disclose the following information for each electricity portfolio on a single power content label in all power content labels about the fuel mix of the electric service product and of total California system electricity:

(1) Fuel mix information of each electricity portfolio and of California total system electricity shall be provided using the following fuel type categories and in the following order, rounded to the nearest tenth of a 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~~ the previous calendar 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) GHG emissions intensity of each electricity portfolio and of California total system electricity in accordance with the calculation method specified in Section 1393 (c), expressed in pounds of CO₂e per megawatt hour.

(4) The retail supplier's company name, phone number, and website address.

(5) Quantity of unbundled RECs retired in support of each electricity portfolio in footnote 5, expressed as a percentage of retail sales.

~~(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).~~

(d) (4) The fuel mix and GHG emissions intensity disclosed by retail suppliers that offer an electricity portfolio electric service product to retail consumers in California and one or more other states shall reflect the entire portfolio of resources and retail sales of that electricity portfolio 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:~~

(e) Custom electricity portfolios negotiated under private contracts shall not be included in the retail supplier's Power Content Label pursuant to Section 1394.1 (c)(1). Instead, such electricity portfolios shall be disclosed to the subscribed customers on a separate Power Content Label and shall not be subject to the promotional materials disclosure requirement of Section 1394.1 (b)(1) or the website disclosure requirement of Section 1394 (b)(2).

(f) If individual customers are served by a mixture of electricity portfolios, the power content label shall include a footnote stating that some customers of the retail supplier may be served by more than one electricity portfolio on the power content label.

(g) Any new community choice aggregator is not required to report data on the GHG emissions intensity of its electricity portfolios until 36 months after serving its first retail customer.

(h)(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.~~

(1)(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.

(2)(B) Notwithstanding the provisions of subdivision (g)(1) of this section, if the promotional materials pertain to more than one electricity portfolio electric service product and contain multiple pages, the power content label for each electricity portfolio product may appear on the page discussing that

electricity portfolio ~~electric service product.~~

~~(i)(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.

§ 1394.2 Auditing and Verification

~~(b) Agreed-upon Procedures~~

~~(a)(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 subdivision (b) 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.

(1) The retail supplier shall engage an auditor to verify the accuracy and completeness of data reported in the annual report submitted to the Energy Commission.

(A) The auditor shall be a Certified Public Accountant in good standing with the American Institute of Certified Public Accountants (AICPA) or a Certified Internal Auditor in good standing with the Institute of Certified Internal Auditors.

(B) The engagement shall be performed in accordance either with the AICPA Audit or Attest Standards or with Generally Accepted Government Auditing Standards for Attestation Engagements or Performance Audits.

(2) A retail supplier that is a public agency providing electric services is not required to comply with the provisions of subdivision ~~(a)(1) (b)(1)~~ for one electricity portfolio 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) (b)(1)~~ shall be submitted for each additional electricity portfolio 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

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~~(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 subdivisions (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.~~

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~~(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.~~

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~~(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.~~

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~~(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.~~

~~(b) (c) Agreed-Upon Audit Procedures~~

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~~(1) Purchases: The auditor shall review the information used to prepare Schedules 1-4 and 2, and perform the procedures identified below, noting any exceptions.~~

~~(A) The auditor shall agree the specified specific purchases and resales/self-consumption by facility ~~or pool~~ name, facility ~~or pool~~ number provided by EIA and RPS as applicable, ~~WREGIS or FERC~~, and kilowatt hours, GHG emissions intensities, and fuel type from the information used to prepare Schedules 1-3 to Schedules 1-3. The auditor shall agree the purchases of unspecified sources of power and resales/~~self-consumption~~ from the information used to prepare Schedules 1-3 to Schedules 1-4. The auditor shall agree the retail sales are accurately reflected on Schedules 1-3. The auditor shall also test the mathematical accuracy of Schedules 1-3.~~

~~(B) The auditor shall select a sample of purchases from the information used to prepare Schedules 1-4 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~~ numbers provided by EIA and RPS as applicable, ~~WREGIS or FERC~~, kilowatt hours and the fuel type from the invoice to the information used to prepare Schedules 1-3.~~

~~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~~ generation agrees to ~~production~~ associated claims.~~

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

~~4. Agree the unbundled RECs reported on Schedule 2 were retired within the reporting year.~~

~~5. Agree any excluded emissions meet the requirements pursuant to Section 1393 (d).~~

~~(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~~

~~(2) (A) The auditor shall obtain a copy of the annual power content label provided to customers for each electricity portfolio pursuant to subdivision (b) of Section 1393 of this chapter. The auditor shall calculate the GHG emissions intensity and fuel and technology mix of the total annual retail sales for the electricity portfolio product using the information reported in the annual report and the calculation methodology provided in Schedule 2 and the equation found in subdivision (a)(2)(A)(2) of Section 13934 of this chapter. The auditor shall then compare these percentages to those identified on the power content label. 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.~~

~~e. 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.~~

(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.

