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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. Power Source Disclosure**

December 7, 2021

§ 1394. Annual Submission to the Energy Commission.

(a) On or before June 1 of each year, each retail supplier shall submit a separate annual report to the Energy Commission containing the information identified in subdivision (b) below for each electricity portfolio offered the previous calendar year, in accordance with the methodology described in section 1393. Retail suppliers must submit this information on the Annual Report forms provided by the Energy Commission.

(1) The retail supplier shall submit an electronic copy of each annual report in conformance with section 1208.1. Paper copies with original signatures shall be retained by the retail supplier and furnished to the Energy Commission upon request.

(2) The report must include an attestation, signed by an authorized agent of the retail supplier under penalty of perjury, that the electricity claimed by the retail supplier as a specified 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. Retail suppliers shall provide the following information for each specified purchase of electricity procured in the previous calendar year and for electricity from unspecified sources from the previous calendar year on the forms provided by the Energy Commission. Retail suppliers shall submit GHG data pursuant to subdivisions (b)(1)(D)-(E) and (b)(3)(D) for generation and procurement that occurs on or after January 1, 2020.

(1) General.

(A) Fuel type attribute information using the fuel type categories identified in section 1393(b)(3). 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)(6).
5. Quantity of unspecified power attributed to the electricity portfolio pursuant to section 1393(a)(4).

(C) Identifying information:

1. Generator name, generator location (state or province), and generator identification numbers under the Renewables Portfolio Standard (RPS) and the Western Renewable Energy Generation Information System (WREGIS), if applicable.
2. EIA number:
 - a. 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).
 - b. For specified purchases of eligible firmed-and-shaped products, the retail supplier shall also provide the EIA identification number of the generator that provided delivered electricity as specified under the firming-and-shaping agreement. If the source of the delivered 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 CO₂e.

(F) Annual surplus generation from a pumped storage facility, meaning the facility produced more electricity than it consumed for storage pumping and other on-site load during the previous year, shall be reported as specified purchases of large hydroelectricity. Annual losses incurred by pumped storage facilities, meaning the facility consumed more electricity through on-site load than it generated, shall not be reported.

(2) Unbundled RECs.

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

(B) Generator name, location, fuel type, vintage year, and WREGIS and RPS identification numbers for each source of retired unbundled RECs.

(C) Upon request by the Energy Commission, the retail supplier shall authorize WREGIS to confirm unbundled REC retirements associated with each electricity portfolio.

(3) Aggregated Data.

(A) Total adjusted net purchase for each fuel type, aggregated from information reported pursuant to subdivision (b)(1)(B).

(B) Total retail sales of the electricity portfolio. The retail supplier shall also describe the retail suppliers' other electricity end-uses in megawatt hours, such as transmission and distribution losses.

(C) Percentage of retail sales for each fuel type, rounded to the nearest tenth of a percent.

(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 specified system power of an asset-controlling supplier if it complies with the following reporting requirements by February 1 each year:

(1) Reports to the CARB under section 95111(f) of the MRR and has an emission factor posted for use on the CARB website;

(2) Reports to the Energy Commission the fuel mix of its specified system mix using the fuel types designated under section 1393(b)(3) and corresponding to the asset-controlling supplier's reporting pursuant to subdivision (c)(1); and

(3) Provides to the Energy Commission an attestation by an authorized officer of the asset-controlling supplier affirming that the fuel mix in its report to the Energy Commission is consistent with the report submitted pursuant to subdivision (c)(1).

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.

§ 1394.1. Retail Disclosure to Consumers.

(a) Pursuant to Section 398.4 of the Public Utilities Code, each retail supplier shall provide to consumers a power content label that discloses the fuel mix and GHG emissions intensity of each electricity portfolio 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. Retail suppliers shall disclose GHG emissions intensity data on power content labels for generation and procurement that occurs on or after January 1, 2020.

(1) Information disclosed on each power content label shall be consistent with the information reported to the Energy Commission on 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.

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

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

(1) The power content label shall be provided in all product-specific written promotional materials that are distributed to consumers by either printed or electronic means, including the retail supplier's Internet Web site, if one exists, except that advertisements and notices in general circulation media shall not be subject to this requirement.

(2) The power content label shall be provided ~~by United States mail to customers served by each electricity portfolio and~~ to the Energy Commission by September 1 of each year on or before the end of the first complete billing cycle for the third quarter of the year. The power content label shall be provided to customers in written promotional materials by the end of the first complete billing cycle for the fourth 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~~ The power content label shall also be displayed on the website of the retail supplier, if it maintains one for purposes of communicating information about electric service, in an easily marked and identifiable location by October 1 of each year.

(c) Each retail supplier shall disclose the following information for every electricity portfolio it offers, except for custom electricity portfolios, on a single power content label:

(1) Fuel mix information of each electricity portfolio and of California total statewide retail electricity sales 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
- (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
- (F) Other, if applicable

(3) GHG emissions intensity of each electricity portfolio and of California total statewide retail electricity sales in accordance with the calculation method specified in section 1393(c), expressed in pounds of CO₂e per megawatt hour. This information shall also be displayed graphically in a bar chart.

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

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

(d) The fuel mix and GHG emissions intensity disclosed by retail suppliers that offer an electricity portfolio to retail consumers in California and one or more other states shall reflect the proportional share of the portfolio of resources attributed to its California retail sales.

(e) Custom electricity portfolios negotiated under private agreement shall not be included in the power content labels provided to the retail supplier's general customers. Instead, such electricity portfolios

shall be disclosed to the subscribed customers on a separate power content label via physical or electronic mail consistent with the provisions of subdivision (b)(2). Custom electricity portfolios shall not be subject to the promotional materials disclosure requirement of subdivision (b)(1) or the website disclosure requirement of subdivision (b)(2).

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

~~(g) New community choice aggregators shall report the GHG emissions intensity of their electricity portfolios beginning with the first annual report containing data from the first full calendar year of operation following the first 24 months of serving their first retail customer. Any new community choice aggregator formed after January 1, 2016, is not required to report data on greenhouse gas emissions intensity associated with retail sales until at least 24 months, but shall report that data no later than 36 months, after serving its first retail customer.~~

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

(1) If the retail supplier offers promotional 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) Notwithstanding the provisions of subdivision (h)(1) of this section, if the promotional materials pertain to more than one electricity portfolio and contain multiple pages, the power content label for each electricity portfolio may appear on the page discussing that electricity portfolio.

(i) Each retail supplier shall use the power content label template provided by the Energy Commission on its website or by electronic mail to generate its power content label. The format of the power content label may not be altered by the retail supplier.

(j) If a retail supplier elects to include additional information related to the sources of unbundled RECs on any power content label, the retail supplier shall submit the proposed information to the Energy Commission for review by May 1 annually. By June 15 annually, the Executive Director or her or his designee shall determine whether the proposed language is limited to information specifically related to the sources of unbundled RECs and does not conflict with the methodology established by the Energy Commission for the calculation of the GHG emissions intensity. If the Executive Director or her or his designee determines that the proposed language meets these requirements, she or he shall issue a modified Power Content Label template to the retail supplier that includes the proposed language in a footnote.

(k) Separate from the power content label, retail suppliers may provide additional information to customers describing other actions relating to GHG that are unrelated to the electricity portfolio.

(l) The power content label shall include the following information in footnotes:

(1) “Renewable energy credits (RECs) are tracking instruments issued for renewable generation. Unbundled renewable energy credits (RECs) represent renewable generation that was not delivered to serve retail sales. Unbundled RECs are not reflected in the power mix or GHG emissions intensities above.”

(2) “The eligible renewable percentage above does not reflect RPS compliance, which is determined using a different methodology.”

(3) “Unspecified power is electricity that has been purchased through open market transactions and is not traceable to a specific generation source.”

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.

(a) 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) 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 with the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Attestation Engagements, Section 600, AICPA Statements on Auditing Standards, Section 622, or the Generally Accepted Government Auditing Standards for Attestation Engagements or Performance Audits as specified under Chapter 1 of the Government Auditing Standards (July 2018), which is hereby incorporated by reference.

(2) A retail supplier that is a public agency providing electric services is not required to comply with the provisions of subdivision (a)(1) if the board of directors of the public agency submits to the Energy Commission an attestation of the veracity of each annual report ~~and power content label~~ for the previous year.

(b) Audit Procedures

(1) The auditor shall review the information used to prepare the annual report and perform the

procedures identified below, noting any exceptions.

(A) The auditor shall agree the specified purchases and resales by facility name, facility number provided by EIA, WREGIS, and RPS if applicable, kilowatt hours, and fuel type from the information used to prepare the annual report is consistent with the information presented in the annual report. The auditor shall agree the purchases of unspecified sources of power, unbundled RECs, and resales from the information used to prepare the annual report is consistent with the information presented in the annual report. The auditor shall agree the retail sales are accurately reflected in the annual report. The auditor shall also test the mathematical accuracy of the annual report.

(B) The auditor shall select a sample of purchases from the information used to prepare Schedule 1, and for each purchase in the sample perform the following procedures:

1. Agree the facility name, facility numbers provided by EIA, WREGIS, and RPS if applicable, 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.
4. Agree the unbundled RECs reported on Schedule 2 were retired in association with an electricity portfolio offered during the previous calendar year, denominated in thousands of kilowatt hours. ~~within the reporting year.~~

(C) The auditor shall agree any excluded emissions meet the requirements pursuant to section 1393(d).

(2) The auditor shall obtain a copy of the annual power content label provided to customers for each electricity portfolio. Using the information reported in the associated annual reports, the auditor shall then compare the information to that identified on the power content label. The auditor shall note any exceptions.

(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.