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California Energy Commission
STAFF REPORT



**POWER SOURCE DISCLOSURE
PROGRAM PRE-RULEMAKING
DRAFT REGULATIONS**

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CALIFORNIA ENERGY COMMISSION

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ABSTRACT

Senate Bill 1305 (Sher, Chapter 796, Statutes of 1997) requires retail electricity providers to disclose quarterly and annual fuel mix information to retail customers in the form of Power Content Labels. The Power Content Label identifies the mix of electricity fuel and technology types of the retail suppliers' own source of power and includes a column listing net system power data as a representation of California's power mix. Net system power is the fuel mix of all the power consumed in California minus the power that is specifically identified by retail suppliers as provided to their customers. Retail suppliers who make claims about the environmental, fuel, or technology characteristics of their power must disclose their actual mix to customers; those who do not make claims may identify their source as net system power.

On October 11, 2009, Assembly Bill 162 (AB 162, Ruskin, Chapter 313, Statutes of 2009) was signed by Governor Schwarzenegger and chaptered into law. This legislation makes a number of changes to the Power Source Disclosure Program. It removes the requirement that retail suppliers provide net system power on customer disclosures and instead requires retail suppliers to disclose total California system electricity, which is the sum of all in-state generation and net electricity imports, designated by fuel type, and is a more accurate representation of California's power mix. The legislation also coordinates the Power Source Disclosure Program with the Renewables Portfolio Standard Program and amends reporting requirements.

The proposed amendments to Energy Commission regulations will ensure compliance with existing law. Although most of the proposed changes to the existing power source disclosure regulations are the direct result of the AB 162 requirements, proposed amendments to Commission regulations also include changes to improve Commission practice and implementation of the original statute.

Keywords: California Energy Commission, Power Source Disclosure Program, SB 1305, AB 162, regulations, rulemaking, Renewables Committee, net system power, total California system electricity, power content label, customer disclosure, power mix, fuel mix

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CHAPTER 1:

Background

The California Legislature passed Senate Bill 1305 (Sher, Chapter 796, Statutes of 1997) to provide reliable, accurate, and timely information for consumers regarding fuel sources for electric generation offered for retail sale in California. SB 1305 required the California Energy Commission to create regulations that would specify the format and means by which this disclosure would take place. The result was the Power Source Disclosure Program, which was detailed in the California Code of Regulations, Title 20, Sections 1391 to 1394.

The Power Source Disclosure Program has required retail electricity providers to disclose quarterly and annual fuel mix information to retail customers in the form of Power Content Labels. All retail suppliers who provide electricity to California customers have been required to include a Power Content Label in promotional materials and in quarterly submittals to their customers.

Under SB 1305 and the related regulations, the Power Content Label identified the mix of electricity fuel and technology types of the retail suppliers' own sources of power and included a column listing "net system power" as a representation of California's power mix for comparison. Net system power was defined as the fuel mix of all the power consumed in California minus the power that was specifically identified by retail suppliers as provided to their customers. Under SB 1305, retail suppliers who made claims about the environmental, fuel, or technology characteristics of their power were required to disclose their actual mix to customers; those who did not make any such claims could instead choose to identify net system power as their power mix on Power Content Labels.

Over the past few years, retail suppliers who provide renewable power have claimed increasing amounts of specific purchases, with the result that net system power now contains a very low level of renewable energy. This result is exactly what the author of the enabling statute intended, as the program was designed to motivate customers to select retail suppliers with higher percentages of renewable sources in their fuel and technology mix. However, because of this success, using net system power on the current label creates the impression that net system power reflects the state's overall level of renewable procurement, which is no longer the case.

Thus, the Power Content Label has become confusing to consumers who want to compare the power mix of their utility to that of the state as a whole, or to measure the progress of their utility toward meeting the goals of the state's Renewables Portfolio Standard, which requires retail sellers of electricity to increase the amount of renewable energy they procure until 20 percent of their retail sales are served with renewable energy.

Assembly Bill 162

On October 11, 2009, Governor Schwarzenegger signed into law Assembly Bill 162 (Ruskin, Chapter 313, Statutes of 2009). This legislation makes changes to the Power Source Disclosure Program to (a) assure that all retail suppliers in California sufficiently disclose their individual fuel mix information, (b) increase the clarity of the information that is provided, (c) coordinate

the Power Source Disclosure Program with the Renewables Portfolio Standard Program, and (d) amend and, in some cases, eliminate some disclosure requirements.

The major change in AB 162 is the elimination of “net system power.” Previously “net system power” was used for two purposes. First, it was used as a proxy for the overall power mix of California, against which an individual utility’s performance could be compared. Second, it was used as a factor in combination with specific purchases of power to calculate the performance of individual utilities. AB 162 eliminates net system power and replaces it instead with two different categories: “Total California system electricity” and “unspecified sources of power.”

Total California system electricity is now the baseline against which an individual utility’s performance can be compared. AB 162 removes the requirement that retail suppliers provide net system power in a separate column on customer disclosures (Power Content Labels), and instead requires retail suppliers to disclose total California system electricity in that column. Total California system electricity is the sum of all in-state generation and net electricity imports, designated by fuel type, and is a more accurate representation of California’s power mix.

“Unspecified sources of power” is now used, in combination with specific purchases, to calculate an individual utility’s performance. AB 162 defines “unspecified sources of power” as “electricity generated that is not traceable to specific generation sources by any auditable contract trail or equivalent that provides commercial verification that the electricity source claimed has been sold once, and only once, to a retail consumer.” (Pub. Utilities Code, § 398.2, subd. (d).) The “unspecified sources of power” will now be included on the Power Content Label as a separate component of a utility’s power mix.

Importantly, this means that AB 162 has eliminated the option under SB 1305 that provided retail suppliers the choice of disclosing (or “claiming”) specific purchases or net system power. The language of AB 162 is unequivocal. According to Section 398.4, Subdivision (a), of the Public Utilities Code, “Every retail supplier that makes an offering to sell electricity that is consumed in California shall disclose its electricity sources.” And, according to Section 398.4, subdivision (g)(1), “A retail supplier’s disclosure of its electricity sources shall be expressed as a percentage of annual sales derived from . . . (A) Unspecified sources of electricity [and] (B) Specific Purchases.” Thus, if a purchase meets the definition of a specific purchase, then it must be disclosed to consumers.

In addition, AB 162 eliminates the quarterly reporting requirement of SB 1305, leaving only marketing and annual reporting. AB 162 also eliminates other reporting requirements, such as the Net System Power Report and the Reconciliation of Retailer Claims Report (Reconciliation Report). AB 162 changes the date of the required annual filing to the Energy Commission to June 1, and the date by which the required annual consumer disclosure must be made to the end of the first complete billing cycle for the third quarter of the year. If a supplier maintains a website, the supplier is now required to post marketing disclosures on the site.

Finally, AB 162 adjusts the fuel categories that suppliers must use in disclosing their fuel mix. “Eligible renewable energy resources” and related subcategories are now defined “pursuant to the California Renewables Portfolio Standard Program,” with a reference to Article 16 of the Public Utilities Code, which implements the Renewables Portfolio Standard (RPS).

Effects of the Proposed Action

Because AB 162 makes a number of changes to the Power Source Disclosure Program, the proposed amendments to Energy Commission regulations will ensure that the Commission remains in compliance with existing law. Although most of the proposed changes to the existing power source disclosure regulations are the direct result of AB 162 requirements, the proposed amendments to Commission regulations also include changes to improve Commission practice and implementation of the original statute.

The amendment to Section 1394 of the regulations discontinues the Energy Commission certificate program and allows retail suppliers to electronically file their annual statements with the Commission to streamline the reporting requirements.

To assure that the intent of the original statute is effectively implemented, the amendment to Section 1393 now requires retail suppliers who provide digital disclosure to consumers to provide a direct link to the Power Content Label in the electronic mail communication and to use specific language to notify consumers of the content of the page reached by the link.

Finally, the amended regulations make several changes to citations necessary to assure that references are complete and up to date. The definition of “Scheduling Coordinator” in section 13891 now incorporates language from the California Independent System Operator (ISO) Fifth Replacement Conformed Tariff as of June 28, 2010, instead of the Restated and Amended Tariff of the California ISO Corporation, dated August 15, 1997. Section 1394, subdivision (a)(1)(C), provides an appropriate statutory reference to Code of Civil Procedure section 2015.5 for attestation. And, Appendix B now references the auditing standards of the Public Company Accounting Oversight Board (PCAOB) instead of the standards of the American Institute of Certified Public Accountants (AICPA).

Alternatives

Before it adopts the proposed amendments, the Energy Commission must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective as and less burdensome to affected private persons than the proposed amendments. To date, the Energy Commission has found no alternatives to the proposed action that would be more effective, or as effective and less burdensome. The Energy Commission’s ability to propose alternatives is limited because most of the proposed amendments are a direct result of the requirements of AB 162.

CHAPTER 2: Proposed Text of Draft Regulations for the Power Source Disclosure Program

The following text is proposed to replace existing regulations, located in the California Code of Regulations, Title 20, sections 1390-1394.

Article 5: Electricity Source Generation Disclosure

Section 1390 - Scope

The regulations in this Article implement the disclosure and reporting requirements established in ~~a~~Article 14 (commencing with section 398.1) of ~~c~~Chapter 2.3 of ~~p~~Part 1 of ~~d~~Division 1 of the Public Utilities Code.

NOTE: Authority cited: Section 25213, Public Resources Code; and ~~s~~Sections 398.3 - 398.5, Public Utilities Code. Reference: Sections 25216, 25216.5, Public Resources Code; and ~~S~~Sections 398.1 - 398.5, Public Utilities Code.¹

Section 1391 – Definitions

~~(a) “Claim that identifies any of a retail supplier’s electricity sources as different from net system power” or “Claim of specific purchases” means any statement that is made to consumers by a retail supplier for the purpose of marketing any electricity product and that contains either:~~

~~(1) a reference to use of an eligible renewable energy resource to generate, in part or in whole, the electricity product offered for sale by the retail supplier, other than disclosure of net system power; or~~

~~(2) a statement that a specific attribute of the electricity product related to the generator creates an environmental effect.²~~

~~(b)~~ **(a)** “Electricity 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 ~~s~~Section 218 of the Public Utilities Code, or sold or transferred to an affiliate, as defined in ~~s~~Section 372, subdivision (a), of the Public Utilities Code.

¹ Style changes to references in California law are made to conform to the *California Style Manual*, 4th Edition.

² § 394.4(a) no longer gives suppliers the *option* of “claiming” a difference from net system power. Since disclosure of *any* specific purchase is now mandatory, there is no longer reason to define “claim of specific purchase.”

(e**b**) “Eligible renewable energy resources” or “eligible renewable”³ means a technology other than a conventional power source, as defined in Section 2805 of the Public Utilities Code, that uses one of the following energy sources, a power source that meets the definition of “in-state renewable electricity generation facility” in Public Resources Code section 25741, and subject to the limitations of Public Utilities Code sections 399.12 and 399.12.5, including the power sources identified in paragraphs (b)(1) – (5), and the power sources identified in paragraph (b)(6);~~and provided that a power source utilizing more than 25 percent fossil fuel may not be included.~~⁴

(1) “Biomass and biowaste.”⁵ For purposes of these regulations, “biomass and biowaste” means an eligible renewable energy resource used to generate electricity, and the power source that is comprised of any organic material not derived from fossil fuels, including, ~~combustible residues or gasses from logging, forest products manufacturing, agricultural and orchard crops, waste products from livestock and poultry operations and food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, landfill, and waste tires converted to electrical energy~~ but not limited to, biodiesel, biogas, biomass, digester gas, landfill gas, municipal solid waste, and sewer gas, each of which is defined and limited by the California Energy Commission, Renewable Energy Program Overall Program Guidebook, Second Edition, publication number CEC-300-2007-003-ED2-CMF, revised December 19, 2007, and by the definition of eligible renewable energy resources.

(2) “Geothermal.” For purposes of these regulations, “geothermal” means an eligible renewable energy resource comprised of natural heat from within the earth, captured for production of electric power., ~~space heating, or industrial steam~~ means the power source that is thermal energy naturally produced within the earth that is converted to electrical energy in boilers and/or turbines.⁶

(3) ~~Small~~ “Eligible hydroelectric.”⁷ For purposes of these regulations, “small eligible 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 does not exceed 30 megawatts,~~ means an eligible renewable energy resource comprised of a facility

3 §398.4(h)(5) instructs that “eligible renewable energy resources” be defined “pursuant to the California Renewables Portfolio Standard Program (Article 16 [commencing with Section 399.11]). This proposed definition cites the appropriate sections of the code, and is in accordance with the definition of eligible renewable energy resources provided for by the *Renewable Energy Program Overall Program Guidebook*, published by the Energy Commission.

4 AB 162 removed this language from § 398.4(h)(1)(F).

5 New language from § 398.4(h)(5)(A).

6 Definition from the *Renewable Energy Program Overall Program Guidebook, 2nd Edition*.

7 New language from § 398.4(h)(5)(C).

employing one or more hydroelectric turbine generators, the sum capacity of which does not exceed 30 megawatts, subject to the provisions of Public Utilities Code sections 399.12 and 399.12.5.

(4) “Solar.” For purposes of these regulations, “solar” means an eligible renewable energy resource ~~the power source that converts sunlight is comprised of radiation from the sun that is~~ directly or indirectly converted to electrical energy.⁸

(5) “Wind.” For purposes of these regulations, “wind” means ~~the power source created by movement of air that is converted to electrical energy in a wind turbine~~ an eligible renewable energy resource comprised of energy from wind converted into mechanical energy and then electricity.⁹

(6) “Other eligible renewable energy resources” or “other renewable.” For purposes of these regulations, the term “other eligible renewable resources” or “other renewable” includes eligible renewable energy resources not identified in subdivisions (b)(1) – (5) of this section, and renewable energy resources as defined and utilized by a local publicly owned electric utility for purposes of implementing its Renewables Portfolio Standard, pursuant to section 387 of the Public Utilities Code.

~~(c)~~ “Energy Commission” means the State Energy Resources Conservation and Development Commission.

~~(d)~~ “Facility” means ~~one or all generating units at an electric generating station~~ with one or more generating units.

~~(e)~~ “Fuel type attribute” means the fuel or technology type used to generate a quantity of kilowatt hours, specified using the categories identified in ~~subdivisions~~ sections ~~(c)~~ (1)(A) and (B) of section 1393, and ~~subdivision~~ section (b)(3)(C) of section 1392.

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

~~(g)~~ “Generating unit” means a device that converts mechanical, chemical, electromagnetic, or thermal energy into electricity and that:

8 This definition is consistent with the definitions of Photovoltaic (PV) and Solar Thermal Electric in the *Overall Program Guidebook*, with the addition of language that limits the fuel type to that of an “eligible renewable energy resource.”

9 Definition from the *Renewable Energy Program Overall Program Guidebook, 2nd Edition*.

- (1) has an electric output capable of being separately identified and metered;
- (2) is located within the Western ~~Systems~~Electricity Coordinating Council interconnected grid; and
- (3) is capable of producing electrical energy in excess of a generation station's internal power requirements.

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

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

(~~jk~~) "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.

(~~kl~~) "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.

(~~lm~~) "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 ~~§~~Section 372, subdivision (a), of the Public Utilities Code.

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

(~~no~~) "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 product being advertised or offered and that are distributed to consumers or made available ~~over the~~ on the retail supplier’s Internet Web site, if one exists.¹⁰ 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”~~¹¹ means an entity that offers an electricity 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 ~~s~~Section ~~4.5.32.2.6~~ of the California Independent System Operator Tariff. (California ISO Fifth Replacement Conformed Tariff as of June 28, 2010, Restated and Amended Tariff of the California Independent System Operator Corporation, August 15, 1997.)¹²

~~(t)~~ “Specific purchase” means a electricity transactions which in which generating facility output is that are traceable to specific generation sources by any auditable contract trail or equivalent, such as a tradable commodity system, that provides commercial verification that the electricity source generating facilities and which provides commercial verification that the generating facility output claimed has been sold once, and only once, to a retail consumers.¹³

~~(u)~~ “System Operator” means the Independent System Operator as defined in ~~subdivision section (h)~~ (i) of this section, or a local publicly owned electric utility that does not utilize the Independent System Operator, as defined in ~~subdivision section (j)~~ (k) of this section.

~~(v)~~ “Unspecified sources of power” means electricity from transactions that are not traceable to specific generation sources by any auditable contract trail or equivalent, such as a tradable commodity system, that provides commercial verification that the electricity source claimed has been sold once, and only once, to a retail consumer.¹⁴

10 New language from § 398.4(b).

11 Language removed from § 398.2(a).

12 The August 15, 1997 amendment to the ISO Tariff is no longer available on the ISO website.

13 New language from § 398.2(c). The language in this definition parallels the inverse of the language from the definition of “unspecified source of power” below.

14 New language from § 398.2(d).

NOTE: Authority cited: Section 25213, Public Resources Code; and ~~S~~sections 398.3 - 398.5, Public Utilities Code. Reference: Sections 25216, 25216.5, Public Resources Code; and ~~s~~Sections 398.1 - 398.5, Public Utilities Code.

Section 1392 – Generation Disclosure

(a) Method and Timing of Submissions

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

(2) Each generator that provides meter data to a System Operator, either directly or through a Scheduling Coordinator, ~~shall~~ must¹⁵ report the information specified in ~~subdivision~~section (b) of this section to the System Operator 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 System Operator

(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 System Operator, or in the event that the System Operator 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.

¹⁵ For consistency throughout the document, the word shall will be changed to must .

(2) Generation Information: Generators ~~shall~~ must report electronically the net 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~~ must report electronically the type of fuel consumed in the preceding quarter.

(B) For generating facilities using more than one fuel type, generators ~~shall~~ must 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~~ must be reported in the following categories:¹⁶

1. Eligible renewable energy resources, which ~~shall~~ must be reported in the following subcategories:

a. Biomass and biowaste

b. Geothermal

c. ~~Small~~ Eligible hydroelectric

d. Solar

e. Wind

f. Other eligible renewable energy resources

2. Coal

¹⁶ Fuel categories in § 1392 have been changed to reflect the same changes in § 1391 and § 1393.

3. Natural gas
4. Large hydroelectric
5. Nuclear
6. Other

(D) Where fuel is reported under subdivision (b)(3)(C)(1)(f) or (b)(3)(C)(6) of this section, generators must include a written description of the type of fuel used as a part of any report required by this section.

(c) System Operator Responsibilities

(1) Subject to the limitations described in ~~subdivision section~~ (c)(2) of this section, all data provided to the System Operator pursuant to ~~subdivision section~~ (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~~ must be provided to the Energy Commission within 60 days of the end of each calendar quarter.

(2) Limitations on Energy Commission Access:

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

(B) The System Operator is not required to provide the Energy Commission with any information submitted under ~~subdivision section~~ (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 electricity product for which a disclosure claim¹⁷ of specific purchases is made.

¹⁷ AB 162 removes the option of “claiming” or not claiming specific purchases. Disclosure of specific purchases is required if such purchases exist, as defined in § 1391.

(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 electricity product for which a ~~disclosure claim~~ of specific purchases is made is not reported pursuant to ~~subdivision section~~ (a) of this section, the generator ~~shall~~ must report electronically the information specified in ~~subdivision section~~ (d)(2)(A) - (C) of this section to the Energy Commission by ~~March~~ June 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 section~~.

(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 System Operator, or in the event that the System Operator 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 section~~ (b)(3)(C) of this section.

(3) When a retail supplier's ~~disclosure claim~~ of specific purchases mandates that a generator comply with the reporting requirements of ~~subdivision section~~ (d)(2) of this

section, the retail supplier ~~shall~~must inform the generator that he or she must comply with these reporting requirements.

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

Section 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 ~~(f)~~(c).

~~(2) “General disclosures” means the disclosures required under Public Utilities Code section 398.4(b) and (c).¹⁸~~

(2) “Eligible renewable energy resources” means eligible renewable energy resources as defined in section 1391 of this article.

(3) “Marketing disclosure” means the disclosure required under Public Utilities Code section 398.4(b).

~~(4) “Net system power” means the fuel mix adopted by the Energy Commission pursuant to Public Utilities Code section 398.5 (f).¹⁹~~

~~(4⁵) “Power content label” means the information disclosed to consumers pursuant to the format requirements of this section.~~

(5) “Total California system electricity” means the sum of all in-state generation and net electricity imports by fuel type.²⁰

~~(6) “Quarterly disclosure” means the disclosure required under Public Utilities Code section 398.4(c).²¹~~

18 New language in AB 162 eliminates quarterly disclosures. Any disclosure must now disclose fuel content for the previous year, so there is no longer a need to distinguish “general” disclosures.

19 Language removed from § 398.4(g)(1).

20 Language added per § 398.4(g)(2).

~~(7) "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 electricity product offered, using the schedule and format specified in this section. For each electricity product, the retail supplier shall do the following:~~

~~(1) A retail supplier that makes a claim of specific purchases shall:~~

~~(A) Disclose the projected fuel mix for the electricity product in the current calendar year in its general disclosures as described in subsection (e) of this section; and~~

~~(B) Separately disclose the fuel mix for net system power in its general disclosures, as described in subsection (e) of this section; and~~

~~(C) Disclose the fuel mix for the electricity product that was sold during the previous calendar year in its annual disclosure, as described in subsection (e) of this section.~~

~~(2) A retail supplier that does not make any claims of specific purchases shall:~~

~~(A) Disclose the fuel mix for the electricity product to be sold in the current calendar year in its general disclosures as the fuel mix for net system power, as described in subsection (e) of this section; and~~

~~(B) Separately disclose the fuel mix for net system power in its general disclosures, as described in subsection (e) of this section; and~~

~~(C) Not make an annual disclosure.²²~~

21 Language removed from § 398.4(c).

22 § 398.4 no longer distinguishes between general and annual disclosures.

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

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

~~(2) Quarterly disclosures shall be provided by United States mail to consumers of the electricity product and the Energy Commission by the end of the first complete billing cycle for each quarter, beginning with the January 1999 quarter, using the power content label. For purposes of this section, quarters shall begin in January, April, July, and October of each year. Retail suppliers may provide quarterly disclosures to consumers via the Internet provided that the consumer has consented to receiving Internet notice in lieu of service by United States mail.~~

~~(3)~~ (2) Annual disclosures ~~shall~~ must be provided by United States mail to consumers of the electricity product and to the Energy Commission on or before October 1 of each year. April 15 beginning in 1999. Retail suppliers may provide annual disclosures to consumers by electronic mail via the Internet, provided that the consumer has consented to receiving ~~Internet~~ notice by electronic mail in lieu of service by United States mail, and subject to the requirements of (d)(3) of this section.²³

(cd) Each retail supplier ~~shall~~ must disclose the following information in all use a power content labels to provide marketing disclosures and annual disclosures for each electricity product offered. All power content labels must include the following information: about the fuel mix of the electricity product and of net system power:

(1) The fuel mix during the previous calendar year for the specific electricity product:
~~The power content labels containing general disclosures shall meet the following requirements:~~

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

1. Eligible renewable

²³ These proposed regulations would address comments from consumers about lack of clarity in electronic communications indicating how or where to find power content labels on utility websites.

2. Coal
3. Large hydroelectric
4. Natural gas
5. Nuclear
6. Other
7. Unspecified sources of power

(B) The retail supplier ~~shall~~must include the following subcategories within the eligible renewable category: ~~provided however, that the retail supplier is not required to display the fuel mix percentages for these subcategories in general disclosures for a product for which a claim of specific purchases was made:~~

1. Biomass and biowaste
2. Geothermal
3. ~~Small~~ Eligible hydroelectric
4. Solar
5. Wind
6. Other renewable

(C) ~~Calculation~~ Information included in the power content label from subdivision (c)(1)(A)(1-6) and subdivision (c) (1)(B) must be derived from the specific purchases procured during the previous calendar year, subject to and as defined in section 1391, subdivision (s) of this chapter. Specific purchases must

only be from sources connected to the Western Electricity Coordinating Council interconnected grid.²⁴

(D) Information included in the product content label from subdivision (c)(1)(A)(6) must be derived from all specific purchases that are not otherwise included in the calculation of the categories listed in subdivisions (c)(1)(A)(1-5).

(E) Information included in the product content label from subdivision (c)(1)(A)(7) must be derived from any unspecified sources of power procured during the previous calendar year, subject to and as defined in section 1391, subdivision (u), of this chapter.

(F) If a purchase of electricity meets the definition of "specific purchase" in section 1391, subdivision (s), it must not be included in the calculation of unspecified sources of power in subdivision (c)(1)(A)(7) of this section. Any specific purchase, as defined in section 1391, subdivision (s), of this chapter, must be included in the appropriate category or subcategory.

(2) The fuel mix for total California system electricity, as defined in subdivision (a)(5) of this section and as provided by the California Energy Commission no later than July 31 of each year.

1. ~~For each electricity product for which no claim of specific purchases has been made, the fuel mix displayed shall be identical to that displayed for net system power. For each electricity product for which a claim of specific purchases has been made, the percentage of each fuel type category or subcategory that is specified shall be calculated by adding the contribution from each specific purchase in the electricity product to the contribution from all other purchases, if any, for that fuel type category or subcategory, as shown by the following formula: $w_1(x) + w_2(y)$.~~

~~a. "w₁" is the percentage of electricity in this electricity product the retail supplier expects to provide through specific purchases;~~

~~b. "x" is the percentage contribution for a given fuel category or subcategory to total specific purchases for that electricity product;~~

24 Per §398.4(j).

c. “ w_2 ” is the percentage of electricity in the electricity product the retail supplier expects to provide through sources other than specific purchases; and

d. “ y ” is the percentage contribution for the fuel category or subcategory to the net system power fuel mix.

2. For purposes of this calculation, the contribution from all other sources shall be calculated using only the most recently adopted fuel mix of net system power.

(2) If a retail supplier makes a claim of specific purchases, the annual disclosure shall consist of the fuel mix of the electricity product sold to consumers during the previous calendar year. In addition, if the percentage of any fuel type category or subcategory contained in any general disclosure made during the previous calendar year for that electricity product varies by more than plus or minus five percentage points from the percentage provided in the annual disclosure, the fuel mix information displayed in the general disclosure that varies the most from this annual disclosure shall be displayed.

(A) For purposes of subsection (d)(2) of this section, the general disclosure that varies the most from this annual disclosure is the general disclosure for which the sum of the squares of the differences between the percentage points identified for each fuel category or subcategory in the general disclosure and in this annual disclosure, as represented by the calculation $\sum(x_i - y_i)^2$, is greatest, where “ x_i ” is the percentage contribution for fuel category or subcategory “ i ” listed in a general disclosure and “ y_i ” is the percentage contribution for fuel category or subcategory “ i ” for the annual disclosure, for “ i ” equals all fuel categories and subcategories.

(B) If the fuel mix information for the electricity product contained in a general disclosure is required to be displayed pursuant to subsection (d)(2), the retail supplier shall also provide an explanation of why there is a difference between the information contained in the general disclosure and the information contained in the annual disclosure.

(de) Each retail supplier shall provide general and annual disclosures for each electricity product offered using a power content label. The power content labels 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.

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

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

(3) In any disclosure provided to consumers by electronic mail, the mail message must contain the power content label or a direct link to a web page that contains the power content label. The link directing customers to the power content label must be preceded by introductory language containing the phrase: "View (utility name)'s energy resource mix." The link and introductory language must appear in a type size no smaller than 10 point.

(e) All information contained in the power content label must appear in one place without other intervening material, and must use the format specified in Appendix A to these regulations.

~~(3) The power content label shall be set off in a box by use of hairlines which shall be all black or one color type such that the lines are conspicuous.~~

~~(4) All information within the power content label shall utilize:~~

~~(A) A single sans-serif font;~~

~~(B) At least one point space between two lines of text;~~

~~(C) Kerning such that letters never touch one another;~~

~~(D) A type size no smaller than 10 point, except that the footnotes and subheadings may be in a type size no smaller than 8 point; and~~

~~(E) Black type or type that is a color easily distinguishable from the background color.~~

~~(5) 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]. For general information about the Power Content Label, contact the California Energy Commission at 1-800-555-7794 or www.energy.ca.gov/consumer", where "Company Name" is the name of the retail supplier. This note shall appear in a type size no smaller than 8 point, and shall be set off from the upper portion of the box by a hairline.~~

~~(6) The power content label containing general disclosures shall appear in the following format:~~

~~(A) The information shall be presented under the identifying heading of "Power Content Label" which shall be in bold, uppercase letters, set in a type size larger than all other type size in the power content label.~~

~~(B) Fuel mix information for the electricity product or products being sold and for net system power shall be displayed in a table format, and shall be organized as follows:~~

~~1. The first row of the table shall contain column headings. Headings shall appear in reverse type against a solid background.~~

~~2. A solid bar shall be displayed immediately below the last row of the table.~~

~~3. The first row of the first column shall display a heading of "Energy Resources", bolded and in all capital letters. Subsequent rows shall display fuel type categories and subcategories, as specified in subsection (d)(1) of this section. The category names shall be displayed in bold, and subcategory names for the eligible renewable category shall be unbolded, indented, and shall display a hyphen immediately before the name of the subcategory. The final row of this column shall read "total" in all upper case letters and in bold.~~

~~4. The second column shall display the fuel mix information for the electricity product being sold. The first row of the second column shall display a heading of the product name, bolded and in all capital letters.~~

Immediately next to the product name in the first row of the second column shall be a footnote marker, directing the reader to the footnote specified in subsection (e)(6)(C)(1). Immediately below the product name shall be the subheading "(projected)". The subsequent rows of the column shall display the fuel mix information for the electricity product being sold. The fuel mix information shall be rounded to the nearest percent, expressed using a percent sign, and may, but need not, include the percentages for the eligible renewable subcategories. The final row for this column shall read "100%." The percentages for the categories shall be aligned and displayed in bold, and the percentages for the eligible renewable subcategories, if any, shall be aligned to the right of the percentages for the categories. If the retail supplier is not making a claim of specific purchases for this electricity product, the fuel mix information displayed for the electricity product shall be identical to that displayed for net system power.

5. Power content labels containing marketing disclosures may contain other columns to the right of the second column to display fuel mix information for other products being sold by the retail supplier. Each of these columns shall be in the same format specified in subsection (e)(6)(B)4. of this section. If fuel mix information for other products is provided, each product name shall be immediately followed by a footnote marker, directing the reader to the footnote specified in subsection (e)(6)(C)1.

6. The column farthest to the right shall contain information about the fuel mix of net system power. The first row of the column shall contain the heading "[Year] CA Power Mix", bolded and in all capital letters, where [Year] refers to the year for which the most recently adopted fuel mix of net system power is available. Immediately next to the heading "[Year] CA Power Mix" shall be a footnote marker, directing the reader to the footnote specified in subsection (e)(6)(C)(2). Immediately below the heading shall be the subheading "(for comparison)". The subsequent rows of the column shall display the fuel mix information for net system power most recently adopted by the Energy Commission, including the percentages for the eligible renewable subcategories. The fuel mix information contained in this column shall be in unbolded type, and the percentages for the fuel type categories shall be aligned, and the percentages for the eligible renewable subcategories shall be aligned to the right of the percentages for the categories. The final row for this column shall read "100%."

(C) Footnotes shall appear at the bottom of the power content label as follows:

1. The first footnote shall read, “[percentage A] % of [Product Name] is specifically purchased from individual providers.”, where “Percentage A” is the percentage of electricity in this electricity product the retail supplier expects to provide through specific purchases, and “Product Name” is the name of the electricity product. If fuel mix information for more than one product is provided in the power content label, the footnote shall list for each electricity product the percentages of the product that the retail supplier expects to provide through specific purchases.

2. The second footnote shall read, “Percentages are estimated annually by the California Energy Commission based on the electricity sold to California consumers during the previous year.”

(D) An example of a power content label that meets the requirements for general disclosures made by a retail supplier that makes a claim of specific purchases is shown in Appendix A 1 to these regulations. An example of a power content label that meets the requirements for general disclosures made by a retail supplier that does not make a claim of specific purchases is shown in Appendix A 2 to these regulations. An example of a power content label that meets the requirements for general disclosures for more than one product is shown in Appendix A 3 to these regulations.

(7) Each retail supplier shall provide a power content label containing an annual disclosure for each electricity product for which it made a claim of specific purchases during the previous calendar year, using the following format:

(A) The information shall be presented under the identifying heading of “Power Content Label” which shall be bolded and in all capital letters, set in a type size larger than all other type size in the power content label. Immediately beneath this heading shall be a subheading “Annual Report of Actual Electricity Purchases for [Product Name] in [Year]”, where “Product Name” is the name of electricity product whose fuel mix is being disclosed, and “Year” is the previous calendar year. This subheading shall be set in a type size larger than the type size used to display the fuel mix information, but smaller than the type size used for the heading, and the product name shall be in bold.

(B) The fuel mix of the electricity product sold to consumers in the previous calendar year shall be displayed in a table format, and shall be organized as follows:

~~1. The first row of the table shall contain column headings. Headings shall appear in reverse type against a solid background.~~

~~2. A solid bar shall be displayed immediately below the last row of the table.~~

~~3. The first row of the first column shall display a heading of "Energy Resources", bolded and in all capital letters. Subsequent rows shall display fuel type categories and subcategories, as specified in subsection (d)(1) of this section. The category names shall be displayed in bold, and subcategory names for the eligible renewable category shall be unbolded, indented, and shall display a hyphen immediately before the name of the subcategory. The final row of this column shall read "Total" in all upper case letters and in bold.~~

~~4. The second column shall display the fuel mix information for the electricity product sold during the previous calendar year. The first row of the column shall contain the heading "Actual Power Mix", bolded and in all capital letters. The subsequent rows of the column shall display the fuel mix information for the electricity product sold during the previous calendar year, using the categories and subcategories specified in subsection (d)(1) of this section. The fuel mix information for the categories contained in this column shall be in bolded type, with the percentages aligned. The fuel mix information for the eligible renewable subcategories shall be in unbolded type and the percentages shall be aligned to the right of the percentages for the categories. The final row for this column shall read "100%", in bolded type.~~

(C) Comparison of General Disclosures to Annual Disclosure

~~1. If the percentage of any fuel type category or subcategory contained in any general disclosure made during the previous calendar year for that electricity product varies by more than plus or minus five percentage points from the percentage provided in the annual disclosure, a third column shall be displayed on the power content label.~~

~~a. If a third column is required, it shall contain the fuel mix information displayed in the general disclosure that varies the most from this annual disclosure. The first row of the third column shall contain the heading "Projected Power Mix", bolded and in all capital letters. Immediately next to the heading "Actual Power Mix" shall be a footnote marker, directing the reader to the~~

~~footnote specified in subsection (e)(7)(C)1.c. The subsequent rows shall display the fuel mix information for the electricity product displayed in the general disclosure that varies the most from this annual disclosure. This information shall be displayed in the format specified in subsection (e)(6)(B)4. of this section.~~

~~b. The general disclosure that varies the most from this annual disclosure is defined in subsection (d)(2)(A) of this section.~~

~~c. Immediately below the last row in the power content label, the retail supplier shall provide a footnote containing an explanation of why there is a difference between the information contained in the general disclosure and the information contained in the annual disclosure.~~

~~2. If no percentage of any fuel type category or subcategory contained in any general disclosure made during the previous calendar year varies by more than plus or minus five percentage points from the percentage in the electricity product sold, the following statement shall be displayed immediately below the last row in the power content label: "For each category, the percentage [Company Name] projected for [Year] was within plus or minus five percentage points of the actual percentage", where "Company Name" is the name of the retail supplier, and "Year" means the previous calendar year. The company name shall be bolded.~~

~~(D) An example of a power content label that meets the requirements for an annual disclosure not requiring inclusion of any previous year's general disclosures is shown in Appendix A 4 to these regulations. An example of a power content label that meets the requirements for an annual disclosure requiring inclusion of a previous year's general disclosure is shown in Appendix A 5 to these regulations~~

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.

Section 1394 – Annual Submission to Filing With the Energy Commission

(a) Retail Supplier Report.

(1) On or before ~~March~~ June 1²⁵ of each year, each retail supplier ~~who made a claim of specific purchases during the previous calendar year shall~~ must provide a filing to the Energy Commission, providing the information identified in ~~subdivision sections~~ subdivisions (a)(2)(A) - (D) below for each electricity product ~~for which such a claim was made.~~

(A) Retail suppliers must provide this information on spreadsheet forms provided by the Energy Commission, ~~and each page must include the Retail Energy Supplier Registration Identification Number provided by the California Public Utilities Commission or, if one is not provided, a unique identification number assigned by the Energy Commission.~~²⁶

(B) The retail supplier must provide one paper copy, with an original signature, ~~and, if feasible, must also provide the information electronically and an electronic copy of the original document containing the original signature.~~²⁷

(C) The report must include an attestation, signed by an authorized agent of the retail supplier in conformity with Code of Civil Procedure section 2015.5 ~~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, including the information in any power content labels provided pursuant to subdivision (a)(2)(D) of this section, is true and correct and in conformity with the definitions provided in sections 1391 and 1393 of this chapter.

(D) All fuel type attribute information ~~shall~~ must be provided using the fuel type categories identified in ~~subdivision sections (c)(1)(A) and (B) of section 1393.~~

(E) Retail suppliers may provide the information specified in ~~subdivision sections~~ 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 ~~subdivision section.~~

(2) Informational Requirements.

(A) Purchases

²⁵ New language in Section 398.5(a).

²⁶ The Energy Commission Retail Energy Supplier Registration Program is no longer in effect.

²⁷ As per current practice and procedure.

1. For each source of generating facility output ~~being claimed as from which a specific purchase was made~~, the retail supplier must include the following information: facility name or pool name, fuel type, facility or pool number (a facility number will be provided by the U.S. Energy Information Agency (EIA), or, if one is not provided, by the Energy Commission, and pool number will be provided by the Energy Commission), ~~certificate number of any certificates issued pursuant to Appendix B of these regulations (if any)~~,²⁸ gross kilowatt hours purchased, kilowatt hours resold or consumed on-site, and the resultant calculation of net specific purchases.

2. The retail supplier ~~shall~~ must also identify kilowatt hours of ~~generic purchases of unspecified sources of power~~, kilowatt hours of ~~generic purchases of unspecified sources of power~~ resold or consumed on-site, and the resultant calculation of net ~~generic purchases of unspecified sources of power~~. This information ~~shall~~ must be provided on the current version of Schedule 1 prepared by the Energy Commission.

3. ~~2.~~ Retail suppliers who ~~are claiming~~ make specific purchases ~~obtained from a pool~~ must reference a filing made no later than ~~March~~ 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, facility number provided by U.S. Energy Information Agency (EIA) or, if one is not provided a unique identification number assigned by the Energy Commission, ~~certificate number of any certificates issued pursuant to Appendix B of these regulations (if any)~~, and total number of kilowatt hours provided into the pool. This information ~~shall~~ must 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. ~~If the purchaser is also a retail supplier, include the Retail Energy Supplier Registration Identification number provided by the California Public Utilities Commission or, if one is not provided, a unique identification number assigned by the Energy~~

²⁸ The Energy Commission Certificate Program is no longer in effect.

~~Commission.~~ This information ~~shall~~must be provided on the current version of Schedule 4 prepared by the Energy Commission.

(B) Retail Sales: The retail supplier filing ~~shall~~must include each product name, the kilowatt hours sold for each product from specific purchases, by fuel type, the kilowatt hours sold for each product from ~~sources other than specific purchases of unspecified sources of power~~, and total retail sales. This information ~~shall~~must be provided on the current version of Schedule 2A prepared by the Energy Commission.

(C) Comparison of Purchases and Sales: The retail supplier filing ~~shall~~must include total net purchases, consistent with subdivision (a)(2)(A) above, minus total retail sales for all products, consistent with subdivision (a)(2)(B) above, and an explanation of any discrepancies between total net purchases and total retail sales. This information ~~shall~~must be provided on the current version of Schedule 2B prepared by the Energy Commission.

(D) Power Content Label: The retail supplier ~~shall~~must provide to the Energy Commission a copy of each ~~marketing promotional disclosure and annual disclosure provided to consumers~~ customers pursuant to ~~subdivisions~~section (b) and (c)(1) of subsection 1393 that varies from any quarterly disclosure provided in that calendar year. ~~In addition, the retail supplier shall also provide a copy of any quarterly label provided to customers pursuant to subsection (c)(2) of section 1393 that was not provided to the Energy Commission at the time it was provided to customers.~~

(b) Agreed-upon Procedures

(1) By ~~June~~ October 1 of each year, any retail ~~provider~~ supplier who made a ~~claim~~ of specific purchases during the previous calendar year ~~shall~~must provide a report prepared by an auditor who has conducted the procedures identified in Appendix ~~B~~ C of these regulations. The report ~~shall~~must contain a summary of the results of the procedures and a proof of service of the annual power content label to customers ~~and the quarterly labels for the previous calendar year upon all customers.~~

(2) A retail ~~provider~~ supplier that is a public agency providing electric services is not required to comply with the provisions of subdivision (b)(1) if ~~that public agency offers only one electricity product to its customers and~~ 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.

(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 claimed as specific purchases 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. The Energy Commission may also on its own motion, or as a result of a request from a member of the public or other agency, investigate electricity transactions claimed as unspecified sources of power to determine whether the transactions are traceable to specific generating facilities and whether they should have been reported as specific purchases. In conducting its investigation, the Energy Commission may require the production of the service lists used to comply with the requirements of ~~subdivision~~section (b) of this section, as well as commercial documents, such as contracts, invoices, the verification procedures performed pursuant to ~~subdivision~~section (b) of this section, and attestations.

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

Appendix A – Format Requirements for Power Content Labels

(a) The power content label, including all general information and footnotes, ~~shall~~must be set off in a box by use of hairlines which ~~shall~~must be all black or one color type such that the lines are conspicuous.

(b) All information within the power content label ~~shall~~must utilize:

(1) A single sans serif font;

(2) At least one point space between two lines of text;

~~(3) Kerning such that letters never touch one another;~~

~~(4)~~ A type size no smaller than 10 point, except that the footnotes and subheadings may be in a type size no smaller than 8 point; and

~~(5)~~ Black type or type that is a color easily distinguishable from the background color.

(c) At the bottom of the box containing the power content label, the following note ~~shall~~must appear: “For specific information about this electricity product, contact [Company Name]. For

general information about the Power Content Label, contact the California Energy Commission at 1-800-555-7794 or www.energy.ca.gov/consumer", where "Company Name" is the name of the retail supplier. This note shall appear in a type size no smaller than 8 point, and shall be set off from the upper portion of the box by a hairline.

(d) ~~The power content label containing general disclosures shall appear in the following format:~~

(A) ~~The information in the power content label shall~~ be presented under the identifying heading of "Power Content Label" which shall be in bold, uppercase letters, set in a type size larger than all other type size in the power content label.

(e) ~~(B) The information in the power content label, including the fuel mix information for the electricity product or products being sold and for total California system electricity, net system power shall~~ be displayed in a table format, and shall be organized as follows:

(1) ~~1.~~ The first row of the table shall contain column headings. Headings shall appear in reverse type against a solid background.

(2) ~~2.~~ A solid bar shall be displayed immediately below the last row of the table.

(3) ~~3.~~ The first row of the first column shall display a heading of "Energy Resources", bolded and in all capital letters. Subsequent rows shall display fuel type categories and subcategories, as specified in ~~subdivision section (c)(1) of this section 1393 of this chapter.~~ The category names shall be displayed in bold, and subcategory names for the eligible renewable category shall be unbolded, indented, and shall display a hyphen immediately before the name of the subcategory. Immediately next to the category "Unspecified sources of power" must be a footnote marker, directing the reader to the footnote specified in subdivision (f)(1) of this Appendix. The final row of this column shall read "total" in all upper case letters and in bold.

(4) ~~4.~~ The second column shall display the fuel mix information for the previous calendar year for the electricity product being sold. The first row of the second column shall display a heading of the product name, bolded and in all capital letters. ~~Immediately next to the product name in the first row of the second column shall be a footnote marker, directing the reader to the footnote specified in subsection (e)(6)(C)(1). Immediately below the product name shall be the subheading "(projected)".~~ The subsequent rows of the column shall display the fuel mix information for the electricity product being sold. The fuel mix information shall be rounded to the nearest percent, expressed using a percent sign, ~~and may, but need not, include the percentages for the eligible renewable subcategories.~~ The final row for this column

~~shall~~ must read "100%." The percentages for the categories ~~shall~~ must be aligned and displayed in bold, and the percentages for the eligible renewable subcategories, if any, ~~shall~~ must be aligned to the right of the percentages for the categories. ~~If the retail supplier is not making a claim of specific purchases for this electricity product, the fuel mix information displayed for the electricity product shall be identical to that displayed for net system power.~~

~~(5)5.~~ Power content labels containing marketing disclosures may contain other columns to the right of the second column to display fuel mix information for other products being sold by the retail supplier. Each of these columns ~~shall~~ must be in the same format specified in ~~subdivision~~ ~~section~~ (e)(~~46~~)(B)4. of this ~~Appendix~~ ~~section~~. ~~If fuel mix information for other products is provided, each product name shall be immediately followed by a footnote marker, directing the reader to the footnote specified in subsection (e)(6)(C)1.~~

~~(6)6.~~ The column farthest to the right ~~shall~~ must contain information about the fuel mix of ~~total California system electricity.~~ ~~net system power.~~ The first row of the column ~~shall~~ must contain the heading "[Year] CA Power Mix", bolded and in all capital letters, where [Year] refers to the year for which the most recently-adopted fuel mix of ~~total California system electricity.~~ ~~net system power~~ is available. Immediately next to the heading "[Year] CA Power Mix" ~~shall~~ must be a footnote marker, directing the reader to the footnote specified in ~~subdivision~~ ~~section~~ (f)(~~26~~)(C)(2) of this ~~Appendix~~. Immediately below the heading ~~shall~~ must be the subheading "(for comparison)". The subsequent rows of the column ~~shall~~ must display the fuel mix information for ~~total California system electricity.~~ ~~net system power~~ most recently adopted by the Energy Commission, including the percentages for the eligible renewable subcategories. The fuel mix information contained in this column ~~shall~~ must be in unbolded type, and the percentages for the fuel type categories ~~shall~~ must be aligned, and the percentages for the eligible renewable subcategories ~~shall~~ must be aligned to the right of the percentages for the categories. The final row for this column ~~shall~~ must read "100%."

~~(f)(C)~~ Footnotes ~~shall~~ must appear at the bottom of the power content label as follows:

~~(1)1.~~ The first footnote ~~shall~~ must read, ""Unspecified sources of power" means electricity from transactions that are not traceable to specific generation sources." ~~[percentage A] % of [Product Name] is specifically purchased from individual providers.", where "Percentage A" is the percentage of electricity in this electricity product the retail supplier expects to provide through specific purchases, and "Product Name" is the name of the electricity product. If fuel mix information for more than one product is provided in the power content label, the footnote shall list for each electricity product the percentages of the product that the retail supplier expects to provide through specific purchases.~~

(2)2. The second footnote ~~shall~~must read, “Percentages are estimated annually by the California Energy Commission based on the electricity sold to California consumers during the previous year.”

(g)(D) An example of a power content label that meets the requirements for ~~general disclosures made by~~ a retail supplier with that makes a claim of specific purchases as defined in section 1391, subdivision (s), of this chapter, is shown in Appendix A-1 to these regulations. An example of a power content label that meets the requirements for ~~general disclosures made by~~ a retail supplier with no specific purchases, as defined in section 1391, subdivision (s), of this chapter, that does not make a claim of specific purchases is shown in Appendix A-2 to these regulations. An example of a power content label that meets the requirements for ~~general disclosures~~ for more than one product is shown in Appendix A-3 to these regulations.

Appendix A-1

Sample power content label showing a product for which the a retail supplier with is claiming some specific purchases. In this example, the product is 58% from specific purchases and 20% from unspecified sources of power 50% from non-specified purchases (for which net system power is claimed), and the most recent net system power calculation is for 1999 total California system electricity calculation is for 2008.

POWER CONTENT LABEL		
ENERGY RESOURCES	PRODUCT NAME[*] (projected)	1999 CA POWER MIX^{**} (for comparison)
Eligible Renewable	— 56%	— 12%
— Biomass & waste	—	— 2%
— Geothermal	—	— 5%
— Small hydroelectric	—	— 3%
— Solar	—	— <1%
— Wind	—	— 2%
Coal	— 10%	— 20%
Large Hydroelectric	— 10%	— 20%
Natural Gas	— 16%	— 31%
Nuclear	— 8%	— 16%
Other	— <1%	— <1%
TOTAL	— 100%	— 100%

^{*} 50% of Product Name is specifically purchased from individual suppliers.

^{**} Percentages are estimated annually by the California Energy Commission based on the electricity sold to California consumers during the previous year.

For specific information about this electricity product, contact **Company Name**. For general information about the Power Content Label, contact the California Energy Commission at 1-800-555-7794 or www.energy.ca.gov/consumer.

POWER CONTENT LABEL		
ENERGY RESOURCES	PRODUCT NAME	2008 CA POWER MIX** (for comparison)
Eligible Renewable	17%	10.6%
-Biomass & waste	3%	2%
-Geothermal	5%	4%
-Eligible hydroelectric	3%	1%
-Solar	1%	<1%
-Wind	5%	2%
-Other renewable	0%	<1%
Coal	8%	18%
Large Hydroelectric	15%	11%
Natural Gas	32%	46%
Nuclear	8%	14%
Other	<1%	<1%
Unspecified sources of power*	20 %	0%
TOTAL	100%	100%

* "Unspecified sources of power" means electricity from transactions that are not traceable to specific generation sources.

**Percentages are estimated annually by the California Energy Commission based on the electricity sold to California consumers during the previous year.

For specific information about this electricity product, contact **Company Name**. For general information about the Power Content Label, contact the California Energy Commission at 1-800-555-7794 or www.energy.ca.gov/consumer.

Appendix A-2

Sample power content label showing a product for which the retail supplier is ~~not claiming~~ made no auditable specific purchases, as defined in section 1391, subdivision (s), of this chapter, in the previous calendar year. In this example, the most recent ~~net system power calculation is~~ for 1999 total California system electricity calculation is for 2008.

POWER CONTENT LABEL		
ENERGY RESOURCES	PRODUCT NAME[*] (projected)	1999 CA POWER MIX^{**} (for comparison)
Eligible Renewable	—12%	—12%
—Biomass and waste	—2%	—2%
—Geothermal	—5%	—5%
—Small hydroelectric	—3%	—3%
—Solar	—<1%	—<1%
—Wind	—2%	—2%
Coal	—20%	—20%
Large Hydroelectric	—20%	—20%
Natural Gas	—31%	—31%
Nuclear	—16%	—16%
Other	—<1%	—<1%
TOTAL	—100%	—100%

^{*} 0% of **Product Name** is specifically purchased from individual suppliers.

^{**} Percentages are estimated annually by the California Energy Commission based on the electricity sold to California consumers during the previous year.

For specific information about this electricity product, contact **Company Name**. For general information about the Power Content Label, contact the California Energy Commission at 1-800-555-7794 or www.energy.ca.gov/consumer.

POWER CONTENT LABEL

ENERGY RESOURCES	PRODUCT NAME	2008 CA POWER MIX** (for comparison)
Eligible Renewable	0%	10.6%
-Biomass & waste	0%	2%
-Geothermal	0%	4%
-Eligible hydroelectric	0%	1%
-Solar	0%	<1%
-Wind	0%	2%
-Other renewable	0%	<1%
Coal	0%	18%
Large Hydroelectric	0%	11%
Natural Gas	0%	46%
Nuclear	0%	14%
Other	0%	<1%
Unspecified sources of power*	100 %	0%
TOTAL	100%	100%

* "Unspecified sources of power" means electricity from transactions that are not traceable to specific generation sources.

**Percentages are estimated annually by the California Energy Commission based on the electricity sold to California consumers during the previous year.

For specific information about this electricity product, contact **Company Name**. For general information about the Power Content Label, contact the California Energy Commission at 1-800-555-7794 or www.energy.ca.gov/consumer

Appendix A-3

Sample power content label showing multiple electricity products. In this example, the most recent ~~net system power calculation is for 1999~~ total California system electricity calculation is for 2008.

POWER CONTENT LABEL			
ENERGY RESOURCES	PRODUCT NAME 1* (projected)	PRODUCT NAME 2* (projected)	1999 CA POWER MIX** (for comparison)
Eligible Renewable	— 56%	— 12%	— 12%
— Biomass & waste	—	— 2%	— 2%
— Geothermal	—	— 5%	— 5%
— Small hydroelectric	—	— 3%	— 3%
— Solar	—	— <1%	— <1%
— Wind	—	— 2%	— 2%
Coal	— 10%	— 20%	— 20%
Large Hydroelectric	— 10%	— 20%	— 20%
Natural Gas	— 16%	— 31%	— 31%
Nuclear	— 8%	— 16%	— 16%
Other	— <1%	— <1%	— <1%
TOTAL	— 100%	— 100%	— 100%

* 50% of Product Name 1 and 0% of Product Name 2 is specifically purchased from individual suppliers.

** Percentages are estimated annually by the California Energy Commission based on the electricity sold to California consumers during the previous year.

For specific information about these electricity products, contact **Company Name**. For general information about the Power Content Label, contact the California Energy Commission at 1-800-555-7794 or www.energy.ca.gov/consumer.

POWER CONTENT LABEL

ENERGY RESOURCES	PRODUCT NAME 1	PRODUCT NAME 2	2008 CA POWER Mix** (for comparison)
Eligible Renewable	17%	100%	10.6%
-Biomass & waste	3%	10%	2%
-Geothermal	5%	20%	4%
-Eligible hydroelectric	3%	5%	1%
-Solar	1%	10%	<1%
-Wind	5%	55%	2%
-Other renewable	0%	0%	<1%
Coal	8%	0%	18%
Large Hydroelectric	15%	0%	11%
Natural Gas	32%	0%	46%
Nuclear	8%	0%	14%
Other	<1%	0%	<1%
Unspecified sources of power*	20 %	0%	0%
TOTAL	100%	100%	100%

* "Unspecified sources of power" means electricity from transactions that are not traceable to specific generation sources.

**Percentages are estimated annually by the California Energy Commission based on the electricity sold to California consumers during the previous year.

For specific information about these electricity products, contact **Company Name**. For general information about the Power Content Label, contact the California Energy Commission at 1-800-555-7794 or www.energy.ca.gov/consumer.

APPENDIX A-4

Sample annual report to customers for the case where actual purchases do not differ by more than five percentage points in any fuel category or subcategory.

POWER CONTENT LABEL	
Annual report of actual electricity purchases for Product Name in 1999	
ENERGY RESOURCES	ACTUAL POWER MIX
Eligible Renewable	— 53%
— Biomass and waste	— 3%
— Geothermal	— 20%
— Small hydroelectric	— 3%
— Solar	— 7%
— Wind	— 20%
Coal	— 8%
Large Hydroelectric	— 12%
Natural Gas	— 20%
Nuclear	— 7%
Other	— 0%
TOTAL	— 100%

For each category, the percentage **Company Name** projected for 1999 was within ± 5 percentage points of the actual percentage.

For specific information about this electricity product, contact **Company Name**. For general information about the Power Content Label, contact the California Energy Commission at 1-800-555-7794 or www.energy.ca.gov/consumer.

APPENDIX A-5

Sample annual report to customers for the case where actual purchases differ from projected fuel mix by more than five percentage points in one or more fuel categories or subcategories.

POWER CONTENT LABEL		
Annual report of actual electricity purchases for Product Name in 1999		
ENERGY RESOURCES	ACTUAL POWER MIX	PROJECTED POWER MIX
Eligible Renewable	49%	56%
-Biomass and waste	3%	-
-Geothermal	15%	-
-Small hydroelectric	3%	-
-Solar	7%	-
-Wind	11%	-
Coal	10%	8%
Large Hydroelectric	14%	12%
Natural Gas	19%	17%
Nuclear	8%	7%
Other	0%	0%
TOTAL	100%	100%

^{*} [explanation for why projected power mix varied from actual purchases]

For specific information about this electricity product, contact **Company Name**. For general information about the Power Content Label, contact the California Energy Commission at 1-800-555-7794 or www.energy.ca.gov/consumer.

Appendix B

Energy Commission Certificate Program

- (a) ~~This subdivision section describes the Energy Commission certificate program, in which a retail supplier may use certificates created by Energy Commission software to demonstrate that it has purchased the right to claim a specified quantity of generating facility output from a specific facility.~~
- (b) ~~The Energy Commission certificate program shall consist of the following elements:~~
- ~~(1) The Energy Commission will make its certificates software available to generators within the Western Systems Coordinating Council that do not sell their generating facility output to an investor-owned utility under the terms of a contract entered into prior to September 24, 1996 under the Public Utilities Regulatory Policies Act of 1978. This software creates facility-specific certificates that contain the following information: the serial number of each certificate issued, the kilowatt hours associated with each certificate, the name of the generator, the generating facility identification number provided by the U.S. Energy Information Agency or, if one is not provided, a unique identification number assigned by the Energy Commission, the quarter in which the electrical energy identified on the certificate was generated, the fuel type used to generate the kilowatt hours, and a signature block for the generator.~~
 - ~~(2) Each generator that wishes to obtain a copy of the certificates software shall provide to the Energy Commission the following information: the generating facility name, the generating facility identification number provided by the U.S. Energy Information Agency or, if one is not provided, a unique identification number assigned by the Energy Commission, the address of the generating facility, the name and telephone number of a designated contact for the generator, and the fuel or technology type and capacity of the generating facility. After receiving this information, the Energy Commission will provide the generator with a copy of its certificates software and a series of certificate numbers to be used for each generating facility identified by the generator.~~
 - ~~(3) Each retail supplier that owns a certificate created by the Energy Commission's certificates software may use that certificate to support a claim of specific purchases in its annual retail supplier report pursuant to the terms of this program. The retail supplier shall include the serial number(s) of the certificates for generation being claimed.~~
 - ~~(4) In the annual report prepared pursuant to Public Utilities Code § 398.5(e), the Energy Commission will find that certificates created by the Energy Commission's certificates software verify that the retail supplier who provided the certificates has purchased the right~~

to claim the generating facility output from the specific facility identified on the certificates, provided the generator has done all of the following:

(A) Ensure that the total amount of generation in each quarter is equal to or greater than the amount of kilowatt hours identified in the certificates issued in that quarter.

(B) Provide the following information to the Energy Commission no less frequently than the fifteenth day after the end of each quarter: total generation during the previous quarter of each facility, the serial numbers of all certificates created by the generator during the previous quarter for each facility, and the amount of kilowatt hours identified in each such certificate.

(C) Provide, upon Energy Commission request, independent third party readings of the facility meter. Generators shall must keep copies of meter reads for two years after the generation occurs.

Appendix B – Agreed-Upon Procedures

(a) This Appendix describes the agreed-upon procedures that retail suppliers ~~with claiming~~ specific purchases ~~in the previous calendar year shall~~ must use to comply with the requirements of ~~subdivisionsection~~ (b)(1) of section 1394 of these regulations. These procedures ~~shall~~ must be performed for each electricity product for which ~~a claim of~~ specific purchases ~~were~~ was made during the previous calendar year, unless the exemption identified in ~~subdivisionsection~~ (b)(2) of section 1394 is applicable. The procedures in ~~subdivisionsections~~ (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 ~~subdivisionsection~~ (c)(3) are applicable to the power content labels disclosing the fuel mix of the product. The procedures described in ~~subdivisionsection~~ (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 ~~subdivisionsection~~ (c) below in accordance with the Public Company Accounting Oversight Board (PCAOB) Interim Attestation Standards for Attest Engagements, AT Section 101, or Interim Attestation Standards for Agreed-Upon Procedures Engagements, AT Section 201. ~~American Institute of Certified Public Accountants (AICPA) Statements on Standards for Attestation Engagements, Section 600 or under Statements on Auditing Standards, Section 622.~~²⁹ The accountant ~~shall~~ must provide a report to the Energy Commission no later than June 1 of each year summarizing the results of the procedures.

(1) The accountant must be a Certified Public Accountant in good standing with the American Institute of Certified Public Accountants 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 PCAOB Interim Auditing Standard 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~~ must be determined by using a statistical sampling program, and sample selection ~~shall~~ must be made on a random basis using a random number generator. In any event, no more than 50 percent

²⁹ Pursuant to the creation of the PCAOB by Sarbanes Oxley and to the PCAOB Auditing Standard No. 1 (made effective by SEC Release No. 34-49707, File No. PCAOB-2003-10 (May 14, 2004)). By Rule 3200T, the PCSOB adopted as interim standards the existing standards of the AICPA. By referencing the PCAOB standards, this section will incorporate future amendments to the AICPA standards by the PCAOB.

(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~~must review the information used to prepare Schedules 1 and 2B, and perform the procedures identified below, noting any exceptions.

(A) The auditor ~~shall~~must agree the specific purchases and resales/self-consumption by facility or pool name, facility or pool number (provided by the U.S. Energy Information Agency (EIA) or by the Energy Commission)~~unique identification number, certificate numbers of any certificates issued pursuant to Appendix B of these regulations, if any,~~ and kilowatt hours and fuel type from the information used to prepare Schedule 1 to Schedule 1. The auditor ~~shall~~must agree the ~~generic~~ purchases of unspecified sources of power and resales/self-consumption from the information used to prepare Schedule 1 to Schedule 1. The auditor ~~shall~~must also test the mathematical accuracy of Schedule 1.

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

(i) Agree the facility or pool name, facility or pool number (provided by the U.S. Energy Information Agency (EIA) or by the Energy Commission)~~unique identification number, certificate number numbers of any certificates issued pursuant to Appendix B of these regulations, if any,~~ kilowatt hours and the fuel type from the invoice (or from the Energy Commission) to the information used to prepare Schedule 1.

(ii) 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.

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

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

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

(A) Agree sales by fuel type and by product from the information used to prepare Schedule 2A to Schedule 2A. The auditor ~~shall~~must also check the mathematical accuracy of Schedule 2A.

(B) Select a sample of sales from the information used to prepare Schedule 2A, using the sampling guidelines discussed in sub~~division~~section (b)(2), and agree the sales to customers by fuel type and product to the billing statement.

(3) Labels

(A) The auditor ~~shall~~must obtain copies of all ~~marketing quarterly and promotional~~ labels for the previous year, and compare the percentages by fuel type in these disclosures to the percentages by fuel type ~~calculated per sub~~division~~section (d)(1)(C)(1) of section 1393 using the data supplied in~~ Schedule 2A, noting any exceptions.

(B) The auditor ~~shall~~must obtain a copy of the annual power content label provided to customers for each product pursuant to sub~~division~~section (be)(27) of section 1393. The auditor ~~shall~~must calculate the fuel and technology mix of the total annual retail sales for the product using the information provided in Schedule 2A and the equation found in sub~~division~~section (d)(1)(C) of section 1393. The auditor ~~shall~~must then compare these percentages to those identified ~~for the actual power mix~~ on the annual label. The auditor ~~shall~~must note any exceptions greater than 1 %.

~~(C) The auditor shall determine if the absolute value of the percentage point difference for any fuel type identified on the annual label and any projected disclosure is greater than five percentage points, and, if so, whether the annual label displays a "Projected Power Mix" column that identifies the projected disclosure that varies the most from the actual fuel mix and a footnote explaining the reason for the discrepancy between the projected and actual fuel mix. The projected disclosure that varies the most from the actual fuel mix is determined pursuant to sub~~division~~sections (d)(2)(A) and (B) of section 1393.~~

(4) Pools

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

(i) The auditor ~~shall~~must agree the purchases by facility name, ~~unique identification facility number, certificate number of any certificates issued pursuant to Appendix B of these regulations, if any,~~ and kilowatt hours and fuel type from the information used to prepare Schedule 3 to Schedule 3. The auditor ~~shall~~must also test the mathematical accuracy of Schedule 3.

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

a. Agree the facility name, ~~facility unique identification number, certificate number of any certificates issued pursuant to Appendix B of these regulations, if any,~~ 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~~must obtain the information used to prepare Schedule 4, and perform the procedures identified below, noting any exceptions.

(i) The auditor ~~shall~~must 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~~must also test the mathematical accuracy of Schedule 4.

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

CHAPTER 3: Next Steps

Stakeholder input is encouraged on any issues presented in this staff paper, or any other issues not discussed, in order to develop and adopt the most effective regulations for the Power Source Disclosure Program. The issues and discussion presented in this paper reflect staff views and do not obligate the Energy Commission to adopt regulations that manifest these views.

Stakeholders will have the opportunity to share their points of view during a comment period following two workshops held November 4 and 5, 2010, at the California Energy Commission. This initial comment period will end November 18, 2010.

After initial comments are received, staff will incorporate any necessary changes into the draft regulations, and will then submit the proposed regulations to the Office of Administrative Law (OAL) for publication in the California Regulatory Notice Register. The publication of the proposed regulations will initiate the OAL's 45 day public comment period, during which all comments received must be docketed, included in the rulemaking record, and responded to by the Energy Commission. The public comment period may be followed by a public hearing, if deemed necessary, where stakeholders may address any outstanding concerns before the regulations are adopted at an Energy Commission Business Meeting.