INITIAL STATEMENT OF REASONS

MODIFICATION OF REGULATIONS GOVERNING THE
POWER SOURCE DISCLOSURE PROGRAM

California Energy Commission
DOCKET NO. 14-OIR-01
DECEMBER 4, 2015

INTRODUCTION

The Power Source Disclosure (PSD) program was established by Senate Bill 1305 (Stats. 1997, ch. 796, § 1) in an effort to provide California consumers a way to easily compare the mix of energy resources used to generate electricity by the state's retail suppliers. The program's intent, as described in statute, is to require the disclosure of "accurate, reliable, and simple to understand information on the sources of energy that are used to provide electric services [in California]."[1] As originally enacted, the PSD program required all retail suppliers of electricity to disclose their projected annual fuel mix information to consumers in the form of a Power Content Label (PCL) on a quarterly basis and in promotional materials.

Retail suppliers had the option of disclosing "specific purchases," transactions that are traceable to a specific generation source, or net system power (NSP), which is the fuel mix of all electricity consumed in the state with the specific purchases excluded. Retail suppliers who made special claims about their product – that it is "green" or environmentally superior to utility power for example – were required to disclose specific purchases. All PCLs disclosed NSP, even when specific purchases were claimed, for comparison purposes. Retail suppliers who claimed specific purchases were also required to provide an annual label to their customers showing actual historic purchases for the previous calendar year, as well as a report to the California Energy Commission with purchases and sales information supporting the claims. Finally, for electricity products for which claims of specific purchases were made, NSP was used to as a proxy for the fuel and technology mix of any electricity in that product which could not be traced to specific generation sources. The Energy Commission adopted regulations in 1998 and 2001 to implement the PSD program.

In 2009, the PSD program was significantly changed by legislation responding to many changes in the electricity market since 1997, including the development of the Renewables Portfolio Stand (RPS), which currently requires California's electricity mix to be 33 percent renewable by 2020 and 50 percent renewable by 2030, and the establishment of the Western Renewable Energy Generation Information System (WREGIS), which is a renewable registry and tracking system used by multiple states to track renewable generation within the western grid. An additional legislative change was

[1] Public Utilities Code, section 398.1, subd. (b).

made in 2012. Specifically, Assembly Bill (AB) 162 (Stats. 2009, ch. 313, §§ 1 - 3) (AB 162) made four substantial changes to the PSD program.

First, AB 162 eliminated the NSP, which could no longer be claimed by retail suppliers and was no longer required to be included in a PCL.

Second, AB 162 required retail suppliers to annually disclose to consumers all electrical purchases for the previous calendar year for each electricity product. (Pub. Utilities Code § 398.4, subd. (a).) It also added subdivision (d) to Pub. Utilities Code § 398.2 which defines "unspecified sources of power" as electricity that is not traceable to a specific generation source. Thus, all purchases for an electricity product must be disclosed on an annual historic basis as either specific purchases or unspecified sources of power. This in turn triggers a requirement that all retail suppliers file an annual report with the Energy Commission as that reporting requirement applies to any retail supplier that identifies specific purchases; previously, retail suppliers who claimed only NSP did not have to file an annual report.

Third, AB 162 eliminated the requirement for projected quarterly disclosures; only the actual mix from the previous calendar year is disclosed in annual and promotional PCLs.

Lastly, AB 162 amended Public Utilities Code S 398.4, subd. (h) to align PSD's definitions for renewable energy resources with those identified by California's RPS.

In 2012, AB 2227 (Stats. 2012, ch. 616, §§ 6 - 7) removed the statutory requirement for retail suppliers to submit their annual reports on June 1, providing the Energy Commission with discretion to establish the due date.

On October 7, 2014, the Energy Commission adopted an Order Instituting Rulemaking to initiate a rulemaking proceeding to consider modifications to its regulations that implement the PSD program. On May 28, 2015, the Energy Commission held a pre-rulemaking public workshop at its headquarters in Sacramento, California to provide stakeholders and interested parties with proposed changes to the PSD program and solicit public comment.

In addition to responding to the statutory changes in the enabling legislation, the Energy Commission wants to respond to inquiries and comments received from stakeholders since the regulations were adopted in 2000, and to the comments received in response to the May 28, 2015, workshop.

If adopted, the proposed regulatory changes will have the following effects: 1) annual consumer PCLs that identify the actual power mix of a retail supplier and of California as a whole for the previous calendar year, denominated as specific purchases or unspecified purchases, as required by statute; 2) the alignment of renewable energy definitions with RPS definitions, as required by statute; 3) the elimination of requirements to make quarterly disclosures and fuel mix projections, as these requirements have been eliminated by statute; 4) all retail suppliers will be required to file an annual report to the Energy Commission, as required by statute; 5) the due date for the annual report will be moved from March 1st to June 1st; 6) inclusion of new guidance regarding reporting requirements applicable to pumped storage, self-

generation, and multijurisdictional retail suppliers; 7) substituting extensive written requirements for formatting the PCL with provision on the Energy Commission's website of an electronic template for the PCL; and 8) minor grammatical and numbering improvements.

The regulations implementing the PSD program can be found in in Title 20, California Code of Regulations, sections 1390 through 1394. The modifications to the proposed Express Terms will affect Sections 1391 – 1394.

THE SPECIFIC PURPOSE, PROBLEM, AND RATIONALE FOR NECESSITY OF THE PROPOSED AMMENDMENTS AND THE BENEFITS THE ENERGY COMMISSION ANTICIPATES FROM THE REGULATORY ACTION, INCLUDING THE BENEFITS OR GOALS PROVIDED IN THE AUTHORIZING STATUTE (Gov. Code §11346.2, subd.(b))

Purpose: The specific purpose of this rulemaking is to modify existing regulations for the Power Source Disclosure program, update disclosure guidelines, and implement changes in law under AB 162 and AB 2227. As noted above, several legislative enactments have occurred since the regulations were adopted, and a number of provisions in the regulations are inconsistent with the enabling statute. Another purpose is to respond to comments and questions from regulated entities regarding various requirements related to disclosure and to reporting. The Energy Commission also intends to improve the formatting of the PCL used for disclosure and to modify the date of the annual report. Finally, the Energy Commission proposes to consider minor grammatical and numbering changes that will improve the readability of the regulations.

Problem: This rulemaking addresses a number of problems. First, the regulations currently do not reflect statutory changes made by AB 162 and AB 2227. Second, regulated entities have expressed uncertainty about how to disclose and report pumped storage hydro, self-generation, and non-California RPS eligible renewables. Third, the requirements in the current regulations governing the design and layout of the PCL have caused considerable confusion among retail suppliers and inconsistencies. And fourth, the annual retail supplier report to the Energy Commission is currently due on a date before retail suppliers can acquire the necessary supporting documentation. In addition, the Energy Commission has identified minor grammatical and numbering changes that would improve the regulations.

Rationale for Necessity: The rationale for the Energy Commission's determination that the proposed Express Terms are reasonably necessary to carry out the purpose of the statute and address the problem for which they are proposed is generally based on staff observation over several years of the program's inconsistencies and shortcomings. The Energy Commission has received numerous requests from reporting entities for clarification on matters pertaining to reporting and disclosure requirements and is aware of the inconsistencies between the regulations and statutory changes made in 2009 and 2012. Many of these proposed changes were suggested in the comments received in response to a pre-rulemaking public workshop held on May 28, 2015. Staff has concluded that the proposed modifications represent the most comprehensive and least

ambiguous method for implementing changes to address the problems listed above, and that the proposed changes are consistent with the original statutory intent of the program for accurate, reliable, and simple to understand information for disclosure to consumers.

Benefits: The proposed modifications will produce a number of benefits. First, the proposed modifications codify statutory changes in the regulations, which will reduce the potential for the misunderstanding of program requirements among reporting entities. Second, clarifying reporting requirements for pumped storage hydro, self-generation, and non-California-eligible renewables will reduce confusion among reporting entities and produce more accurate power mixes for consumer disclosures. Third, the implementation of an on-line PCL template will eliminate confusion and reduce the workload for retail suppliers. Fourth, the proposed date for the annual report is more feasible than the current date for retail suppliers. Finally, several other grammatical and numbering changes will improve the readability of the regulations.

Specific Technologies or Equipment

The proposed regulations do not mandate the use of specific technologies or equipment.

LIST OF PROPOSED MODIFICATIONS

Section 1391 – Definitions

- **Section 1391 (a) —** Claim that identifies any of the retail provider's electricity sources as different from net system power or claim of specific purchases. This definition was removed because it was eliminated in statutory changes made by AB 162.
- **Revised Section 1391 (a)** — Balancing authority. This definition was added to bring the regulations in line with the contemporary usage of terms. Since the original statute was enacted, the term "balancing authority" has supplanted the term "system operator" in the energy industry. Because the statute continues to reference "system operator," that definition, found in revised Section 1391, subd. (v), has been modified to state that "system operator" is synonymous with "balancing authority." Additional references to the term "system operator" in Section 1392 have been replaced with the term "balancing authority" in the regulations. This change was necessary to incorporate commonly used terms.
- **Section 1391(b)** – Electricity Product. The citation style was changed to be consistent with the California Style Manual. This is a non-substantive change. As a result, the same formatting changes are made throughout the proposed Express Terms and are not mentioned again in this document, as the rationale is the same for each such change.

- **Section 1391 (c) —** Eligible Renewable. The definition of eligible renewable was modified because of the requirement pursuant to AB 162 that the PSD program use the same definitions of eligible renewable as in the RPS program. (Pub. Utilities Code § 398.4, subd. (h)(5).) This is a "status conferred" situation, in which any definition of eligible renewable adopted pursuant to the RPS program will be used for Power Source Disclosure, consistent with the statutory mandate in subdivision (h)(5) of Pub. Utilities Code section 398.4, as added by AB 162.
- **Section 1391 (c)(1) –** Biomass and biowaste. The definition was stricken because AB 162 directs the Energy Commission to use the definition that is used for the RPS program. The regulation continues to identify the specific renewable resource types required to be disclosed under the PSD statutes. The change from "waste" to "biowaste" is made to ensure consistency with the resource type identified in subdivision (h)(5)(A), as amended by AB 162; the same change is made elsewhere in the proposed Express Terms and is not mentioned again in this document, as the rationale is the same for each such change elsewhere in the regulations.
- **Section 1391 (c)(2) –** Geothermal. The definition was stricken because AB 162 directs the Energy Commission to use the definition that is used for the RPS program. The regulation continues to identify the specific renewable resource types required to be disclosed under the PSD statutes.

  Section 1391 (c)(3) – Eligible hydroelectric. The definition was stricken because AB 162 directs the Energy Commission to use the definition that is used for the RPS program. The regulation continues to identify the specific renewable resource types required to be disclosed under the PSD statutes.
- **Section 1391 (c)(4) –** Solar. The definition was stricken because AB 162 directs the Energy Commission to use the definition that is used for the RPS program. The regulation continues to identify the specific renewable resource types required to be disclosed under the PSD statutes.

  Section 1391 (c)(5) – Wind. The definition was stricken because AB 162 directs the Energy Commission to use the definition that is used for the RPS program. The regulation continues to identify the specific renewable resource types required to be disclosed under the PSD statutes.
- **Section 1391 (h)(2) –** "Electricity" has been added and "systems" has been struck out to update the acronym of the Western Electricity Coordinating Council (WECC), which is the successor organization to Western Systems Coordinating Council.
- **Section 1391 (n) –** Non-California eligible renewable. This term was added because the new statutory definition of "eligible renewable" enacted in AB 162 made it impossible for retail suppliers to identify renewable facilities that are not California RPS eligible, but are eligible for an RPS program in a different state.

However, multi-jurisdictional retailers are subject to different RPS requirements in different states, and their products may have sources that are eligible in one state and not another. The Energy Commission determined that these retail suppliers should be allowed to disclose these sources as other non-California eligible renewable, and is using its authority under subdivision (h)(6) of Pub. Utilities Code § 398.4 to establish such a category. This new energy category was also added to the list of fuel mix resources in Section 1393, subd. (d)(1)(F**)**.

- **Section 1391 (o) –** The numbering of this subdivision was changed to accommodate the addition of Section 1391, subd. (n), as described above. All subsequent changes to accommodate the addition of Section 1391 subd. (n) will not be referenced again in this document, as the rationale is the same for each such change elsewhere in the regulations
- **Section 1391 (p) –** "Suppliers" has been added and "providers" struck out due a statutory change in terminology enacted with AB 162. The same change from "providers" to "suppliers" is made throughout the proposed Express Terms and is not mentioned again in this document, as the rationale is the same for each such change.
- **Section 1391 (t) –** The numbering of this subdivision was changed to correct the title of the Independent System Operator (ISO) Tariff. This is a "status conferred" situation, in which any changes in the definition of scheduling coordinator adopted in the ISO's tariff will be used for the PSD program.

  Section 1391 (u) – Specific Purchases. This definition has been modified to explicitly include generation from facilities owned or controlled by retail suppliers. This change is necessary because limiting transactions to electricity purchased by a retail supplier and excluding electricity generated by a retail supplier's own facilities would result in electricity sold at retail being unreported by retail suppliers, contrary to the intent of the statutory scheme.
- **Section 1391 (v)** – System Operator**.** This definition has been modified so that it is synonymous with the definition of "balancing authority" in new Section 1391 (a). The rationale for this change is found in the discussion of new Section 1391(a) above.
- **Section 1391 (w) —** Total California System Electricity. This term was added by and defined in AB 162 (Pub. Utilities Code § 398.4, subd. (g)(2)). It is included here so that all relevant definitions can be found in one place.
- **Section 1391 (x) —** Unspecified Sources of Power. The definition was added by AB 162, (Pub. Utilities Code § 398.2, subd. (d)) and is included here so that all relevant definitions can be found in one place. This new energy category was also added to the list of fuel mix resources in new Section 1393 subd. (d)(1)(G), and the term was included in Section 1394, subds. (a)(2)(B) & (C).

- **Section 1391 (y) —** WREGIS Certificate. The Western Renewable Energy Generation Information System (WREGIS) is an independent, renewable energy tracking system for the region covered by the Western Electricity Coordinating Council (WECC). WREGIS tracks renewable energy generation from units that register in the system by using verifiable data and creating renewable energy certificates (RECs) for this generation. This definition was added because WREGIS certificates can be used by retail suppliers to establish the fuel and technology characteristics of electricity they sell to consumers in California.

Section 1392 – Generation Disclosure

- **Section 1392 (a)(1) –** References to "system operator" have been replaced with "balancing authority" in order to bring the regulations in line with contemporary usage of terms. See the discussion of 1391, subd. (a). This replacement is also made throughout the rest of the proposed regulations, and will not be referenced in subsequent sections of this document, as the rationale for the change is the same.
- **Section 1392 (b)(3)(C)1.c –** The category "small hydroelectric" has been replaced by "eligible hydroelectric" in subdivision (h)(5)(C) in Pub. Utilities Code § 398.4, as enacted by AB 162. See explanation for Section 1391, subd. (c)(3) above.
- **Section 1392(b)(3)(C)7.**- The category Non-California eligible renewable was added. See explanation under 1391(n) above.

Section 1393 – Retail Disclosure to Consumers

The Energy Commission proposed to replace existing Section 1393 in in its entirety with a new section 1393. The majority of the statutory changes enacted in AB 162 address and affect retail supplier disclosure to consumers, and the breadth of the changes is such that a replacement is simpler and easier for consumers to understand. The changes to section 1393 include the four substantial changes identified in the Introduction above, as well as inclusion of guidance addressing pumped storage and non-California eligible renewable resources.

- **Section 1393 (a)(1) - (3) —** Subdivision (a) provides the definitions used in the section. Annual and marketing disclosures are the remaining types of disclosures retail suppliers must make to consumers and are described in the enabling statute. (Pub. Utilities Code § 398.4, subds. (b), (c), and (d).) The definitions are included here so that all the key definitions applicable to the section can be found in one place. Similarly, a definition of the power content label is provided in order to create a short, easy to understand term for the required disclosure formatted

pursuant to the requirements of this section. The definition of eligible renewable references the definition provided in Section 1391 and is needed to ensure that key definitions relevant to this section can be found in one place.

- **Section 1393(b)** - Subdivision (b) reiterates the language identifying what must be disclosed by statute (as amended by AB 162 in Pub. Utilities code § 398.4, subd. (a)), as well as referencing the fact that the section contains scheduling and formatting requirements. This allows retail suppliers to understand that required disclosures to consumers are subject to content, scheduling, and formatting requirements.
- **Section 1393(c)(1) & (2)** - Subdivision (c) identifies the timing requirements of the two types of disclosures – marketing and annual. The language governing marketing disclosures is derived from the requirements in subdivision (b) of Pub. Utilities Code section 398.4, whereas annual disclosure is identified in subdivision (c) on Section 398.4. This section also allows, with customer consent, for the use of electronic mail because of the widespread use of electronic mail for billing purposes.
- **Section 1393(d)** - Subdivision (d) identifies the specific fuel mix information that must be included in marketing and annual disclosures, and the means of calculating the fuel mix information. Although the list of fuel types in Pub. Utilities Code § 398.4 is reorganized, the categories are the same with the following exceptions: 1) subdivision (d) does not reiterate that the disclosure is of the fuel mix of products sold the previous calendar year as that requirement is already identified in subdivision (b); 2) additional language is providing guidance for pumped storage facilities; and 3) a category called Non-California eligible renewable is added.

  The guidance provided for pumped storage addresses questions raised by retail sellers. Pumped storage is a type of resource in which water is pumped uphill (using electricity) to a reservoir during times of low electricity demand and then released through turbines during times of high electricity demand. Pumping the water uphill to the reservoir consumes more electricity than it generates when the water is discharged from the reservoir through the hydroelectric turbine. Pumped storage facilities in California have generating capacities that put them in the "large hydroelectric facility" category under the RPS definitions. The proposed change requires net generation of pumped storage hydroelectric resources to be reported as zero kilowatt hours (kWh) if the facility consumes more electricity than it generates. This change was made to prevent a fuel mix distortion which could occur if retail suppliers with pumped storage hydroelectric facilities reported negative net generation for these facilities. At the same time, this change will still allow positive net generation from pumped storage facilities to be counted in a

retail supplier's power mix. The Energy Commission finds that this change will make the power content label more accurately reflect a retail supplier's electrical generation as called for in statute.

Non-California eligible renewable was added as a category as discussed under **Section 1391 (n)** above. The statutory definition of "eligible renewable" enacted in AB 162, which is the definition used for purposes of the RPS program, made it impossible for retail suppliers to identify renewable facilities that are not California RPS eligible, but are eligible for an RPS program in a different. However, multi-jurisdictional retailers are subject to different RPS requirements in different states, and their products may have sources that are eligible in one state and not another. The Energy Commission determined that these retail suppliers should be allowed to disclose these sources as other non-California eligible renewable, and is using its authority under subdivision (h)(6) of Pub. Utilities Code § 398.4 to establish such a category.

In addition, guidance is provided on how a retail supplier is to calculate fuel mix of an electricity product. All retailers must base their calculations on all purchases and the calculations must be consistent with the annual report filed with the Energy Commission. This ensures consistency of the information that is disclosed to customers with the information that is reported to the Energy Commission.

Finally, this subdivision now provides guidance to multi-jurisdictional retailer suppliers, by directing them to use the entire portfolio of resources of the electricity product as a basis for the fuel mix calculation. This clarification is necessary because a multi-jurisdictional retail supplier expressed uncertainty about whether the calculation should be based on resources that are used to supply California customers only. The proposed regulatory language reflects the fact that information provided in pre-rulemaking comments demonstrated the impossibility of tracking resources by customer location.

- **1393 (e)(1) & (2)** – These subdivisions, unchanged from the current language, establish the formatting requirements for the PCL. As is currently the case, the information provided in the PCL needs to be in one place without intervening material so it is easy to read. In addition, if promotional materials consist of more than one page, the PCL itself or a note indicating the location of the PCL shall be found on the cover page or first facing page. This is necessary to ensure that a PCL can be found in promotional materials.

- **New Section 1393 (e)(3)** – The proposed Express Terms stipulate the mandatory use of the PCL template provided by the Energy Commission on its website, and include guidance for inputting a retail supplier's fuel mix into the template. Under existing regulations, despite extensive regulatory sections that mandate the specific design and layout of the PCL, PCLs had inconsistent appearances and contents. The Energy Commission believes the use of a template will reduce inconsistencies. The template will be available on-line and retail suppliers will enter their own fuel mix information into the template, and use the resulting PCL for consumer disclosure. This change will simplify the disclosure process and reduce the potential for confusion with regard to the design and layout of the PCL. This change will also facilitate uniformity of PCLs issued by the various retail suppliers so that consumers can easily identify and compare fuel mix disclosure of various utilities, which conforms to the statutory purpose of the program to provide accurate, reliable, easy-to-understand information.

Section 1394 – Annual Submission to the Energy Commission

- **Section 1394 (a)(1)** – The annual submission due date for a retail supplier's report to the Energy Commission of electrical purchases and retail sales has been changed from March 1 to June 1 of every reporting year. The March 1st date was contained in SB 1305, the original legislative enactment of the PSD program in 1997. However, Pub. Utilities Code § 398.5. subd. (a) (as enacted in AB 162) provides the Energy Commission with the discretion to select the due date. After considering stakeholder comments, the Energy Commission has determined that the date that best balances retail supplier and Energy Commission scheduling needs is June 1st. Similarly, the language requiring annual reports only of those retail suppliers who made claims of specific purchases is eliminated, because changes enacted in AB 162 requires all retail suppliers to disclose their specific purchases. (Pub. Utilities Code 398.4, subd. (a).)
- **Section 1394 (a)(1)(A) —** Language pertaining to the requirement to use retail supplier identification numbers was deleted, as these numbers are no longer used by the Energy Commission in the PSD program. The word "Spreadsheet" is replaced with the term "Annual Report" as it more accurately identifies what the retail supplier is filing.
- **Section 1394 (a)(1)(B) —**Language was changed to allow a retail supplier to provide either a hard copy or an electronic copy of its annual report to the Energy Commission, rather than requiring both a hard copy and an additional electronic copy (if feasible). This change provides reporting flexibility for retail suppliers,

and will speed the transmission of annual reports, the calculation of California Total System Power, and the disclosure of retail supplier fuel mixes to consumers.

- **Section 1394 (a)(2)(A)(1) —** The Energy Commission proposes a number of minor changes to this section. The requirement to submit Energy Commission Certificates was replaced with a requirement to submit WREGIS certificates. Due to the implementation of WREGIS as the independent, renewable energy tracking system for the region covered by the WECC, the Energy Commission no longer uses the certificate program identified in Appendix B, and proposes to delete Appendix B as part of this rulemaking. Language is added to have retail suppliers provide generation facilities' locations, which assists in tracking generation by facility, as well as Energy Information Agency (EIA), WREGIS, or Federal Energy Regulatory Commission (FERC) facility or pool numbers This also helps in tracking generation by facility. Guidance for the reporting of purchased and resold electricity has been stricken, and is addressed instead in the new section, 1394 (a)(2)(A)(2). Additional small, non-substantial grammatical changes have been made to clarify the meaning of this provision.
- **Section 1394 (a)(2)(A)(2) —** This subdivision was added to clearly define that gross generation, net generation, and resold or consumed electricity must be reported separately. This language replaces the guidance included in existing subdivision (a)(2)(A)(1) of this section.
- **Section 1394 (a)(2)(A)(3)** – The annual submission due date for a power pool's electrical purchases and retail sales has been changed from March 1 to June 1 of every reporting year, pursuant to the requirement found in Pub. Utilities Code 398.5 (a). This change matches the change made in subdivision (a)(1) of this section and the rationale for this change is the same as that for subdivision (a)(1).
- **Section 1394 (a)(2)(A)(3) a and b.** – The requirement to submit Energy Commission Certificates was replaced with a requirement to submit WREGIS certificates. Due to the implementation of WREGIS as the independent, renewable energy tracking system for the region covered by the WECC, the Energy Commission no longer uses the certificate program identified in Appendix B, and proposes to delete Appendix B as part of this rulemaking. Language is also added to have retail suppliers provide generation facilities' locations which assists in tracking generation by facility, as well as EIA, WREGIS, or FERC facility or pool numbers; this also helps in tracking generation by facility. The requirement for a retailer supplier number was eliminated. See Section 1394, subdivisions (a)(1)(A) and (a)(2)(A)(1) for a more detailed explanation of the rationale for these changes.

- **Section 1394 (a)(2)(B) -** The term “unspecified sources of power” has replaced “the kilowatt hours sold for each product from sources other than specific purchases.” “Unspecified sources of power” is a statutory definition put in place in subd. (d) of Pub. Utilities Code section 398.2. by AB 162 that has the same meaning as the replaced phrase. Instructions in this section have been modified to indicate that this information should be presented on Schedule 1, rather than Schedule 2A, as a result of a redesign of the reporting schedules by the Energy Commission. These changed schedules resulted in the elimination of schedules 2A & 2C, while Schedule 2B became Schedule 2. The reporting for multiple electrical products, which was the purpose of schedules 2A and 2C, will instead be accounted for by individual submissions of the report for each product, as the regulations indicate in Section 1394 (a)(1). The reporting schedules provide a template on which a retail supplier identifies the information required by this section, and do not contain any additional informational requirements.
- **Section 1394 (a)(2)(C) –** The term “total” was added to expressly require the comparison of total purchases and sales. This change simply clarifies existing statutory requirements. The term “unspecified sources of power” has replaced language that had the same meaning. Language in this section has also been modified to indicate that this information should be presented on Schedule 2, rather than Schedule 2B, as a result of a redesign of the reporting schedules by the Energy Commission. See Section 1394 (a)(2)(B) for a more detailed explanation of the latter two changes.
- **Section 1394 (a)(2)(D) –** This provision pertaining to the submission of PCLs to the Energy Commission was modified to reflect changes pursuant to AB 162 to required types of consumer disclosures. See Section 1393 (a) for a more detailed explanation of this change.
- **Section 1394 (b)(1) –** The reporting due date for annual audits was changed from June 1 to October 1 provide retail suppliers with sufficient time between annual report submission and the due date for the audit. See Section 1394 (a)(1) for a more detailed explanation of this change. Additional language pertaining to quarterly PCLs has been deleted because AB 162 eliminated the requirement or quarterly disclosures.
- **Section 1394 (c) –** Language was changed to allow the Energy Commission to investigate all electricity transactions reported by a retail supplier, rather than only those claimed as specific purchases. This change is necessary to reflect the fact that under the statutory changes enacted by AB 162, retail suppliers are now required to disclose all purchases as either specific purchases or unspecified sources, not just specific purchases.

Appendix A – Power Content Labels

- **Appendix A-1-A-5 –** All subdivisions of this appendix have been eliminated, as they provided examples of power content labels that met the formatting requirements identified in Section 1393 that the Energy Commission proposes to eliminate. Under subsection (e)(3) of that section, the Energy Commission is now providing an on-line template that retail suppliers must use for consumer disclosure and which is generated when the retailer suppliers inputs the fuel mix percentages of its products into the template. As noted in the discussion of subdivision (e)(3) of Section 1393, the use of the PCL template will eliminate confusion about the formatting requirements contained in the regulations, and ensure the production of consistent PCLs .

Appendix B – Energy Commission Certificate Program

- **Appendix B –** All subdivisions of this appendix have been eliminated, as they pertain to a program the Energy Commission has not used since the implementation of WREGIS, which now provides renewable generation tracking throughout the WECC.

Appendix C– Agreed-Upon Procedures

- **Appendix C –** This appendix has been renamed Appendix A as a result of the elimination of appendices A and B.

- **Subdivision (a)** – The proposed language makes non-substantive grammatical changes.
- **Subdivision (b)** – The proposed language reflects the new date for the annual report, discussed under 1394, subd. (a)(1) above.
- **Subdivision (c)(1) –** The change to this subdivision reflects the updating of the reporting schedules discussed under Section 1394, subd. (a)(2)(B) above.
- **Subdivision (c)(1)(A) –** The change substitutes the reference to certificates generated by a program the Energy Commission proposes to delete as part of this rulemaking with WREGIS certificates, which the Energy Commission proposes to accept as proof of renewable generation. In addition, the proposed language adds facility or pool numbers provided by various federal or regional agencies to the list of items that must be agreed with the information used to prepare Schedule 1.
- **Subdivision (c)(1)(B)(1)** - The change substitutes the reference to certificates generated by a program the Energy Commission proposes to delete as part of this rulemaking with WREGIS certificates, which the Energy Commission proposes to accept as proof of renewable generation. In addition, the proposed

language adds facility or pool numbers provided by various federal or regional agencies to the list of items that must be agreed with the information used to prepare Schedule 1.

- **Subdivision (c)(1)(C) –** Instructions in this section have been modified to indicate that this information should be presented on Schedule 2, rather than Schedule 2B, as a result of a redesign of the reporting schedules by the Energy Commission. See Section 1394, subd. (a)(2)(B) for more detail.
- **Subdivision (c)(2) —** Instructions in this section have been modified to indicate that this information should be presented on Schedule 2, rather than Schedule 2A, as a result of a redesign of the reporting schedules by the Energy Commission. See Section 1394 (a)(2)(B) for more detail.
- **Subdivision (c)(2) (A)and (B)—** The proposed language eliminated requirements for auditors to agree to sales by fuel type and to conduct sampling to verify sales data by fuel type, due to the fact that this has proven to be impossible. In addition, language is proposed that would require the auditor to agree to total retail sales information used to create Schedule 1 with the sales information actually provided on the Schedule. This is necessary for the auditing results to be credible.
- **Subdivision (c)(3)(A) –** This subdivision has been stricken. It pertained to the comparison of quarterly and promotional disclosures to annual report data submitted to the Energy Commission, but AB 162 eliminated quarterly disclosures, and the Energy Commission has deemed that auditing procedures are sufficient without auditing promotional (or marketing) disclosures.
- **Subdivision (c)(3)(C) –** This subdivision has been deleted, as projected fuel mixes are no longer required by statute.
- **Subdivision (c)(4)(A)(1) –** The change substitutes the reference to certificates generated by a program the Energy Commission proposes to delete as part of this rulemaking with reference to WREGIS certificates, which the Energy Commission proposes to accept as proof of renewable generation. In addition, the proposed language adds facility or pool numbers provided by various federal or regional agencies to the list of items that must be agreed with the information used to prepare Schedule 3.
- **Subdivision (c)(4)(A)(2) –** The reference “of this section” was added to specifically cite a subdivision of this appendix.
- **Subdivision (c)(4)(A)(2)(a) –** The change substitutes the reference to certificates generated by a program the Energy Commission proposes to delete as part of this rulemaking with WREGIS certificates, which the Energy Commission proposes to accept as proof of renewable generation. In addition, the proposed language adds facility or pool numbers provided by various federal

or regional agencies to the list of items that must be agreed with the information used to prepare Schedule 3.

- **Subdivision (c)(4)(B)(2) —**The reference “of this section” was added to specifically cite a subdivision of this appendix.

ECONOMIC IMPACT ASSESSMENT (Gov. Code §§ 11346.3, subd. (b), 11346.2 subd. (b)(2)(A))

This section contains an analysis of the potential economic impacts resulting from proposed modifications to the regulations implementing the PSD program. Pursuant to Gov. Code § 11346.3, subd. (b), staff has determined that the proposed Express Terms are a non-major regulatory change. The elements identified in 11346.3, subds. (b)(1)(A) through (D) are addressed below. The Energy Commission has also prepared the Fiscal Impact portion of the Form 399 in accordance with instructions from the Department of Finance. That form is included in the docket of this proceeding.

If adopted, the proposed regulatory changes will have the following effects: 1) annual consumer PCLs that identify the actual power mix of a retail supplier and of California as a whole for the previous calendar year, denominated as specific purchases or unspecified purchases, as required by statute; 2) the alignment of renewable energy definitions with RPS definitions, as required by statute; 3) the elimination of requirements to make quarterly disclosures and fuel mix projections, as these requirements have been eliminated by statute; 4) all retail suppliers will be required to file an annual report to the Energy Commission, as required by statute; 5) the due date for the annual report will be moved from March 1st to June 1st; 6) inclusion of new guidance regarding reporting requirements applicable to pumped storage, self-generation, and multijurisdictional retail suppliers; 7) substituting extensive written requirements for formatting the PCL with provision on the Energy Commission’s website of an electronic template for the PCL; and 8) minor grammatical and numbering improvements.

All of the changes contained in the proposed Express Terms that could potentially have an economic impact reflect statutory changes made as a result of AB 162 and the Energy Commission has no ability or discretion to modify those changes. Changes that are not mandated by statute – providing guidance for pumped storage, self-generation, and multi-jurisdictional retail suppliers, changing the annual report due date, requiring use of a template, and minor grammatical and numbering changes – will not have an economic effect.

Creation or Elimination of Jobs

The proposed modifications to the regulations are not expected to create or eliminate a significant number of jobs. Although the changes to the PSD statute enacted in AB 162 increased some of the disclosure and reporting requirements applicable to retail sellers, and decreased others, the changes are due to the statute itself, not the regulations, which merely implement the statutory changes. No other modifications – whether required by statute or proposed to clarify and simplify reporting or disclosure requirements – impose any costs. They either clarify existing requirements or provide less burdensome alternatives for complying with the statutory mandates.

Creation or Elimination of Businesses

The proposed modifications to the regulations are not expected to create new businesses or eliminate existing businesses. Although the changes to the PSD statute enacted in AB 162 increased some of the reporting requirements applicable to retail sellers, and decreased others, the changes are due to the statute itself, not the regulations, which merely implement the statutory changes. No other modifications – whether required by statute or proposed to clarify and simplify reporting or disclosure requirements – impose any costs; they either clarify existing requirements or provide less burdensome alternatives for complying with the statutory mandates.

Expansion of Existing Businesses

The proposed modifications to the regulations are not expected to result in the expansion of existing businesses. Although the changes to the PSD statute enacted in AB 162 increased some of the reporting requirements applicable to retail sellers, and decreased others, the changes are due to the statute itself, not the regulations, which merely implement the statutory changes. No other modifications– whether required by statute or proposed to clarify and simplify reporting or disclosure requirements – impose any costs; they either clarify existing requirements or provide less burdensome alternatives for complying with the statutory mandates.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, or the Environment

The Energy Commission has determined that the proposed modifications to the regulations will not directly impact the health and welfare of California residents, worker safety, or California's environment, although they may indirectly improve the environment by creating awareness of and interest in the importance of renewable energy sources.

Studies, Reports, and Documents Relied Upon (Gov. Code § 11346.2, subd. (b)(3))

- *Comments on Power Source Disclosure Program Pre-Rulemaking, Center for Resource Solutions,* June 12, 2015 http://www.energy.ca.gov/power_source_disclosure/14-OIR-01/2015-05-28_workshop/comments/Center_for_Resource_Solutions_Comments_on_Power_Source_Disclosure_Program_2015-06-12_TN-75965.pdf
- *Comments on Consideration to Rulemaking Modifications, Marin Clean Energy*, June 15, 2015, http://www.energy.ca.gov/power_source_disclosure/14-OIR-01/2015-05-28_workshop/comments/Marin_Clean_Energys_Comments_on_Consideration_to_Rulemaking_Modifications_2015-06-15_TN-75981.pdf
- *Comments on Power Source Disclosure Program, Law Office of Thomas Corr*, June 15, 2015, http://www.energy.ca.gov/power_source_disclosure/14-OIR-01/2015-05-28_workshop/comments/Noble_Americas_Energy_Solutions_LLCs_Comments_on_Power_Source_Disclosure_Program_2015-06-15_TN-75982.pdf
- *Comments on Power Source Disclosure Program, Southern California Public Power Authority,* June 19, 2015, http://www.energy.ca.gov/power_source_disclosure/14-OIR-01/2015-05-28_workshop/comments/SCPPA_Comments_on_Power_Source_Disclosure_Program_2015-06-19_TN-75990.pdf
- *Joint Comments on the Rulemaking to Consider Modifications to the Regulations, PGE/SDGE/SCE,* July 1, 2015, http://www.energy.ca.gov/power_source_disclosure/14-OIR-01/2015-05-28_workshop/comments/Joint_Comments_on_the_Rulemaking_to_Consider_Modifications_to_the_Regulations_2015-07-01_TN-76011.pdf
- *Comments to CEC on Power Source Disclosure Program Pre-Draft Regulations, NCPA,* July 1, 2015, http://www.energy.ca.gov/power_source_disclosure/14-OIR-01/2015-05-28_workshop/comments/NCPA_Comments_to_CEC_on_Power_Source_Disclosure_[Program_Pre-Draft_Regulations_2015-07-01_TN-76012.pdf
- *Comments on the Power Source Disclosure Program Regulations, Pacificorp,* July 1, 2015, http://www.energy.ca.gov/power_source_disclosure/14-OIR-01/2015-05-28_workshop/comments/Pacificorp_Comments_on_Power_Source_Disclosure_Regulations_2015-07-01_TN-76013.pdf
- *CMUA Comments, California Municipal Utilities Association,* July 2, 2015, http://www.energy.ca.gov/power_source_disclosure/14-OIR-01/2015-05-28_workshop/comments/CMUA_Comments_2015-07-02_TN-76014.pdf

- *Comments on the CEC Staff's Proposed Text of Draft Regulations for the Power Source Disclosure Program, Shell Energy North America, July 1, 2015,* http://www.energy.ca.gov/power_source_disclosure/14-OIR-01/2015-05-28_workshop/comments/Shell_Energy_North_America_Comments_on_Power_Source_Disclosure_Program_Pre-Rulemaking_Draft_Regulations_2015-07-01_TN-76288.pdf
- *SMUD Comments on Pre-Rulemaking Draft Regulations to the Power Source Disclosure Program,* July 7, 2015, http://www.energy.ca.gov/power_source_disclosure/14-OIR-01/2015-05-28_workshop/comments/Sacramento_Municipal_Utilities_District_Comments_on_Pre-Rulemaking_Draft_Regulations_to_the_Power_Source_Disclosure_Program_2015-07-07_TN-76019.pdf
- *Renewable Portfolio Standard Eligibility Guidebook, Eighth Edition*. California Energy Commission, CEC-300-2015-001-ED8-CMF, June 2015, http://www.energy.ca.gov/2015publications/CEC-300-2015-001/CEC-300-2015-001-ED8-CMF.pdf
- California Independent System Operator Fifth Replacement FERC Electric Tariff, (December 1, 2014)

REASONABLE ALTERNATIVES, IF ANY, TO THE PROPOSED REGULATIONS (Gov. Code Section 11346.2, subd. (b)(4)(A))

No reasonable alternatives to the proposed modification of the regulations were considered. No reasonable alternatives were identified that were less burdensome and equally effective in achieving the purposes of the proposed modifications to the regulations that were also practical and in accordance with the law. The proposed regulations do not mandate the use of specific technologies or equipment or prescribe specific actions or procedures, except for the reporting requirements. The proposed changes to the reporting requirements either derive from statutory changes or reduce reporting requirements; therefore, a performance standard was not considered.

ALTERNATIVES THAT WOULD LESSEN IMPACTS ON SMALL BUSINESSES (Gov. Code Section 11346.2, subd. (b)(4)(B))

The Energy Commission has determined that no small business will be impacted by proposed modifications to the regulations that are not mandated by law or existing regulation. Government Code § 11342.610 defines small businesses in the utility or power transmission industry as entities that transmit fewer than 4.5 million kWhs of electricity. The proposed modifications impact no reporting entity that fits this definition.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR SIMILAR DOCUMENTS RELIED UPON REGARDING BUSINESS IMPACT DETERMINATION (Gov. Code Section 11346.2, subd. (b)(5)(A)

As explained in the Economic Impact assessment provided above, although changes to the PSD statute enacted in AB 162 increased some of the reporting requirements applicable to retail sellers, and decreased others, the changes are due to the statute itself, not the regulations, which merely implement the statutory changes. No other modifications – whether required by statute or proposed to clarify and simplify reporting or disclosure requirements – impose any costs on business; they either clarify existing requirements or provide less burdensome alternatives for complying with the statutory mandates. This should result in either no impact on business or a slight reduction in the costs of complying with the requirements of the PSD program.

EFFORTS TO AVOID DUPLICATION (Gov. Code section 11346.2(b)(6))

The Energy Commission finds that proposed modifications to these regulations will not cause unnecessary duplication or any conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues.

FINDINGS RE REGULATIONS REQUIRED BY FEDERAL LAW (Gov. Code § 11346.2(c))

The Energy Commission finds that the proposed Express Terms are not mandated by federal law or regulation**.**

REPORT FINDING (Gov. Code § 11346.3(d))

The Energy Commission finds that the proposed Express Terms require a business to file a report because the statutes that are implemented by the regulations require retail suppliers to provide disclosures to consumers and a report to the Energy Commission. The Energy Commission relies on the fact that the Legislature made a decision to impose these requirements in finding that it is necessary for the health, safety, or welfare of the people of the state that the regulations apply to business.