

**State of California
Office of Administrative Law**

In re:
California Energy Commission

Regulatory Action:

Title 20, California Code of Regulations

Adopt sections:

Amend sections: 1391, 1392, 1393, 1394

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

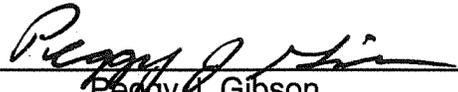
OAL Matter Number: 2016-0921-02

OAL Matter Type: Regular (S)

The California Energy Commission is amending four sections in title 20 of the California Code of Regulations. These amendments are designed to implement statutory changes to the Power Source Disclosure program. This program is designed to require the disclosure of information on the sources of energy that are used to provide electric service in California. The PSD program requires retail suppliers to provide to retail consumers a Power Content Label on an annual basis. This rulemaking makes changes necessary due to statutory amendments in AB 162 (Stats. 2009, Ch. 313) and AB 2227 (Stats. 2012, Ch. 616) and also to make improvements to the regulations in response to feedback from the regulated entities. The regulations are also being amended to improve retail consumers' understanding of what sources of electricity they consume.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 10/31/2016.

Date: October 31, 2016



Peggy J. Gibson
Senior Attorney

For: Debra M. Cornez
Director

Original: Robert P. Oglesby

Copy: Lisa DeCarlo

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

REGULAR

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2015-1124-08	REGULATORY ACTION NUMBER 2016-0921-025	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

OCT 31 2016
3:43 P.M.

2016 SEP 21 P 2:37
OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
California Energy Commission

AGENCY FILE NUMBER (if any)
14-OIR-01

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY		ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2015, 49-2	PUBLICATION DATE 12-4-2015

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Power Source Disclosure Program Implementation	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT AMEND 1391, 1392, 1393, 1394 REPEAL
TITLE(S) 20	

3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
December 18, 2015-February 19, 2016; March 29, 2016- April 14, 2016; and June 17, 2016-July 1, 2016

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON Lisa DeCarlo	TELEPHONE NUMBER 916-654-5195	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) lisa.decarlo@energy.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 9-20-16
TYPED NAME AND TITLE OF SIGNATORY Robert P. Oglesby, Executive Director	

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ENDORSED APPROVED

OCT 31 2016

Office of Administrative Law

Express Terms

Power Source Disclosure Implementation Rulemaking

Division 2. State Energy Resources Conservation and Development Commission

Chapter 3. Data Collection

Article 5. Electricity Generation Source Disclosure

§ 1391. Definitions.

~~(a) "Claim that identifies any of a retail provider'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 provider for the purpose of marketing any electricity product and that contains either:~~

~~(1) a reference to use of an eligible renewable to generate, in part or in whole, the electricity product offered for sale by the retail provider, 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.~~

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

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

(c) "Eligible renewable" means electrical generation from a facility that is certified pursuant to the Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11)) of the Public Utilities Code, and uses one of the following fuel types: 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, provided that a power source utilizing more than 25 percent fossil fuel may not be included:

(1) Biomass and biowaste. For purposes of these regulations, "biomass and waste" means the power source that is comprised of 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.

(2) Geothermal. For purposes of these regulations, "geothermal" means the power source that is thermal energy naturally produced within the earth that is converted to electrical energy in boilers and/or turbines.

(3) Small Eligible hydroelectric. For purposes of these regulations, "small 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

(4) Solar. For purposes of these regulations, "solar" means the power source that is comprised of radiation from the sun that is directly or indirectly converted to electrical energy.

(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.

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

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

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

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

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

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

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

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

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

- (j) "Independent System Operator" or "ISO" means the entity that is subject to the requirements of Section 345 et seq. of the Public Utilities Code.
- (k) "Large hydroelectric" means the power source created when water flows from a higher elevation to a lower elevation and that is converted to electrical energy in one or more generators at a single facility, the sum capacity of which exceeds 30 megawatts.
- (l) "Local publicly owned electric utility that does not utilize the Independent System Operator" means any of the following entities that owns generation facilities that are not individually metered by the ISO: (1) a municipality or municipal corporation operating as a public utility district furnishing electric services ; (2) an irrigation district furnishing electric services; or (3) a joint powers authority that includes one or more of the entities identified in (1) or (2) and that owns generation or transmission facilities, or furnishes electric services over its own or its members' electric distribution system.
- (m) "Net electricity generated" means electricity generated by any generating facility, less any generation used on-site, sold through an over-the-fence transaction, as defined in Section 218 of the Public Utilities Code, or sold or transferred to an affiliate as defined in subdivision (a) of Section 372(a) of the Public Utilities Code.
- (n) "Out-of-State power" means power generated entirely outside the state which is sold for wholesale or retail purposes in California.
- (o) "Pool" means an entity into which multiple generators deliver generating facility output and out of which multiple retail providers 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 electric service product being advertised or offered and that are distributed to consumers or made available over the Internet. It does not include advertisements and notices in general circulation media.
- (q) "Report electronically" means to provide files in either a database or spreadsheet format that can be read by the most recent version of either Microsoft™ Excel or Microsoft™ Access.
- (r) "Retail supplier" or "retail provider" means an entity that offers an electricity electric service product for sale to retail consumers in California.
- (s) "Scheduling Coordinator" means any entity certified by the Independent System Operator for the purposes of undertaking the functions specified in Section 2-2-6 4.5.1 of the Independent System Operator Tariff. (~~Restated and Amended Tariff of the~~

California Independent System Operator Corporation, August 15, 1997 Fifth Replacement FERC Electric Tariff, December 1, 2014)

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

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

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

(w) "Unspecified sources of power" means electricity that is not traceable to specific generation sources by any auditable contract trail or equivalent, including a tradable commodity system, that provides commercial verification that the electricity source claimed has been sold once and only once.

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

Reference: Sections 25216 and 25216.5, Public Resources Code; and Sections 398.1-398.5, Public Utilities Code.

§ 1392. Generation Disclosure.

(a) Method and Timing of Submissions

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

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

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

(1) General Information:

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

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

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

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

(3) Fuel Information:

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

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

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

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

a. Biomass and biowaste

b. Geothermal

c. Small Eligible hydroelectric

d. Solar

e. Wind

2. Coal

3. Natural gas

4. Large hydroelectric

5. Nuclear

6. Other

(c) ~~System Operator~~ Balancing Authority Responsibilities

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

(2) Limitations on Energy Commission Access:

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

(B) The ~~System Operator~~ balancing authority is not required to provide the Energy Commission with any information submitted under ~~subsection~~division (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~~ electric service product for which a claim of specific purchases is made.

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

(2) If generation or fuel information for electrical energy that is sold in an ~~electricity~~ electric service product for which a claim of specific purchases is made is not reported pursuant to ~~subsection~~division (a) of this section, the generator shall report electronically the information specified in ~~subsection~~division (d)(2)(A)-(C) of this section to the Energy Commission by March 1 of each year beginning in 1999 for each generating facility that generated such electrical energy in

California. If the information is provided to the Energy Commission in another filing, the generator may submit a statement identifying the filing and section of the filing in which the information is contained in lieu of a separate filing pursuant to this subsection division.

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

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

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

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

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

Reference: Sections 25216 and 25216.5, Public Resources Code; and Sections 398.3 and 398.5, Public Utilities Code.

§ 1393. Retail Disclosure to Consumers.

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

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

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

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

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

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

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

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

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

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

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

A. Eligible renewable

B. Coal

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

D. Natural gas

E. Nuclear

F. Other

G. Unspecified sources of power

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

A. Biomass and biowaste

B. Geothermal

C. Eligible hydroelectric

D. Solar

E. Wind

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

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

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

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

(2) Location of the power content label.

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

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

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

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

§ 1393. — Retail Disclosure to Consumers

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

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

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

~~(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).~~

~~(5) "Power content label" means the information disclosed to consumers pursuant to the format requirements of this section.~~

~~(6) "Quarterly disclosure" means the disclosure required under Public Utilities Code section 398.4(e).~~

~~(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 provider 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 provider shall do the following:~~

~~(1) A retail provider 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 provider 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.~~~~
- ~~(c) Each retail provider shall disclose the information required in this section to consumers according to the following schedule:
 - ~~(1) Marketing disclosures shall be provided in all product-specific written promotional materials that are distributed to consumers, as defined in subsection (p) of section 1391 of these regulations.~~
 - ~~(2) 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 providers 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) Annual disclosures shall be provided in writing to consumers of the electricity product and to the Energy Commission on or before April 15 of each year beginning in 1999. Retail providers may provide annual disclosures to consumers via the Internet, provided that the consumer has consented to receiving Internet notice in lieu of service by United States mail.~~~~
- ~~(d) Each retail provider shall disclose the following information in all power content labels about the fuel mix of the electricity product and of net system power:
 - ~~(1) The power content labels containing general disclosures shall meet the following requirements:
 - ~~(A) Fuel mix information shall be provided using the following fuel type categories and in the following order, rounded to the nearest percent:
 1. Eligible renewable
 2. Coal
 3. Large hydroelectric
 4. Natural gas
 5. Nuclear
 6. Other~~
 - ~~(B) The retail provider shall include the following subcategories within the eligible renewable category, provided however, that the retail provider 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 waste
2. Geothermal
3. Small hydroelectric
4. Solar
5. Wind

~~(C) Calculation~~

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 provider 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;

c. "w₂" is the percentage of electricity in the electricity product the retail provider 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 provider 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 $\text{SIGMA}(x_i - y_i)^2$, 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 provider 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.

(e) Each retail provider shall provide general and annual disclosures for each electricity product offered using a power content label. The power content label shall use the following format:

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

(2) Location of the power content label.

(A) If the retail provider offers 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 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 appear in a type size no smaller than 10 point.

(B) Notwithstanding the provisions of subsection (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) 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 provider. 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 provider 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 provider. 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 provider 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 provider 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 provider 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 provider 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 provider 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 provider 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 provider, 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; Section 398.4, Public Utilities Code. Reference: Sections 25216, 25216.5, Public Resources Code; and Section 398.4, Public Utilities Code.~~

~~§ 1394. Annual Submission to the Energy Commission.~~

~~(a) Retail Provider Supplier Report.~~

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

(A) Retail providers suppliers must provide this information on spreadsheet the Annual Report 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.~~

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

(C) The report must include an attestation, signed by an authorized agent of the retail provider supplier under penalty of perjury, that the generating facility output claimed by the retail provider supplier as a specific purchase during the previous calendar year was sold once and only once to retail customers of that retail provider supplier, and that the information provided in the report is true and correct.

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

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

(2) Informational Requirements.

(A) Purchases

1. For each source of generating facility output from which being claimed as a specific purchase was made, the retail provider supplier must include the following information: facility name or pool name, fuel type, state or province the facility is located in, facility or pool number ~~(a facility number will be provided by the U.S. Energy Information Agency (EIA), or, if one is not provided, by the Energy Commission WREGIS, or the Federal Energy Regulatory Commission (FERC), 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), gross kilowatt hours purchased, kilowatt hours resold or consumed on-site, and the resultant calculation of net specific purchases. The retail provider shall also identify kilowatt hours of generic purchases, kilowatt hours of generic purchases resold or consumed on-site, and the resultant calculation of net generic purchases. This information shall be provided on the current version of Schedule 1 prepared by the Energy Commission.

2. All specific purchases and unspecified sources of power shall be reported on Schedule 1 as individual line items of gross kilowatt hours of purchased electricity and net kilowatt hours of purchased electricity, which shall be calculated by subtracting resold and consumed electricity. All reported purchases shall be denominated in thousands of kilowatt hours.

23. Retail providers suppliers who make are claiming 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, state or province the facility is located in, 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, WREGIS, or FERC, 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 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 provider, 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. This information shall be provided on the current version of Schedule 4 prepared by the Energy Commission.

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

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

(D) Power Content Label: The retail provider supplier shall provide to the Energy Commission a copy of each promotional marketing and annual disclosure provided to customers pursuant to subsection subdivisions 1393 (c)(1) and (2) of subsection 1393 that varies from any quarterly disclosure provided in that calendar year. In addition, the retail provider 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 all retail provider suppliers who made a claim of specific purchases during the previous calendar year shall provide a report prepared by an auditor who has conducted the procedures identified in Appendix C A of these regulations. The report shall contain a summary of the results of the procedures and a proof of service of the annual power content label to customers, ~~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) ~~for if that public agency offers only one electricity~~ electric service 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. A report in accordance with subdivision (b)(1) shall be submitted for each additional electric service product it offers to its customers.

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

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

APPENDIX A

Appendix A-1
REPEAL

Sample power content label showing a product for which the retail supplier is claiming some specific purchases. In this example, the product is 50% from specific purchases and 50% from non-specific purchases (for which net system power is claimed), and the most recent net system power calculation is for 1999.

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.

HISTORY

1. New Appendix A-1 filed 3-5-2001; operative 3-5-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 10).

Appendix A-2

REPEAL

Sample power content label showing a product for which the retail supplier is not claiming specific purchases. In this example, the most recent net system power calculation is for 1999.

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.

HISTORY

1. New Appendix A-2 filed 3-5-2001; operative 3-5-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 10).

Appendix A-3

REPEAL

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

POWER CONTENT LABEL			
ENERGY RESOURCES	PRODUCT NAME 1* <small>(projected)</small>	PRODUCT NAME 2* <small>(projected)</small>	1999 CA POWER Mix** <small>(for comparison)</small>
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.

HISTORY

1. New Appendix A-3 filed 3-5-2001; operative 3-5-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 10).

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REPEAL

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.

HISTORY

1. New Appendix A-4 filed 3-5-2001; operative 3-5-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 10).

Appendix A-5

REPEAL

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.

HISTORY

1. New Appendix A-5 filed 3-5-2001; operative 3-5-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 10).

Appendix B
Energy Commission Certificate Program

- (a) This subsection describes the Energy Commission certificate program, in which a retail provider 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 provider 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 provider report pursuant to the terms of this program. The retail provider 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 provider 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 must keep copies of meter reads for two years after the generation occurs.

Appendix ~~GA~~: Agreed-Upon Procedures

(a) This appendix describes the agreed-upon procedures that retail ~~providers~~ suppliers ~~claiming specific purchases~~ shall use to comply with the requirements of ~~subsection~~ subdivision (b)(1) of ~~Section~~ Section 1394 of these regulations. These procedures shall be performed for each ~~electricity~~ electric service product for which a ~~claim of specific purchases was~~ were made during the previous calendar year, unless the exemption identified in ~~subdivision~~ section (b)(2) of ~~Section~~ Section 1394 of these regulations is applicable. The procedures in ~~subdivisions~~ sections (c)(1), and (c)(2) of this Appendix are applicable to all transactions relating to the fuel mix of the product, and the procedures in ~~subdivision~~ section (c)(3) are applicable to the power content labels disclosing the fuel mix of the product. The procedures described in ~~subdivision~~ section (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~~ provider must engage an independent accountant or certified internal auditor to perform the procedures identified in ~~subdivision~~ section (c) below, in accordance with the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Attestation Engagements, Section 600 or under Statements on Auditing Standards, Section 622. The accountant shall provide a report to the Energy Commission no later than October ~~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~~ AICPA or a Certified Internal Auditor in good standing with the Institute of Certified Internal Auditors.

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

(c) Agreed-Upon Procedures

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

(A) The auditor shall agree the specific purchases and resales/self-consumption by facility or pool name, facility or pool number provided by EIA, WREGIS, or FERC, 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 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 also test the mathematical accuracy of Schedule 1.

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

1. Agree the facility or pool name, facility or pool number provided by EIA, WREGIS, or FERC, unique identification number, certificate number 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.

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

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

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

(2) Sales: The auditor shall review the information used to prepare Schedules 1 and 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 also check the mathematical accuracy of Schedule 2A. The auditor shall agree the total retail sales information used to prepare Schedule 1 to total retail sales shown on Schedule 1.

(B) Select a sample of sales from the information used to prepare Schedule 2A, using the sampling guidelines discussed in subsection (b)(2), and agree the sales to customers by fuel type and product to the billing statement. The auditor shall agree the total retail sales shown on Schedule 1 to total retail sales shown on Schedule 2. The auditor shall also check the mathematical accuracy of Schedule 2.

(3) Labels

~~(A) The auditor shall obtain copies of all 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 subsection (d)(1)(C)(1) of section 1393 using the data supplied in Schedule 2A, noting any exceptions.~~

~~(B)(A) The auditor shall obtain a copy of the annual power content label provided to customers for each product pursuant to subdivision section (eb)(7) of Section 1393 of this chapter. The auditor shall calculate the fuel and technology mix of the total annual retail sales for the product using the information provided in Schedule 2A and the equation found in subdivision section (ad)(12)(CA)(2) of Section 13943 of this chapter. The auditor shall then compare these percentages to those identified for the actual power mix on the annual label. The auditor shall note any exceptions greater than 1%.~~

~~(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 subsections (d)(2)(A) and (B) of section 1393.~~

(4) Pools

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

1. The auditor shall agree the purchases by facility name, facility number provided by EIA, WREGIS, or FERC 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 information used to prepare Schedule 3 to Schedule 3. The auditor shall also test the mathematical accuracy of Schedule 3.

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

a. Agree the facility name, facility unique identification number provided by EIA, WREGIS, or FERC, 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 provider, agree the kilowatt hours with meter readings made by an independent third party, or confirm that the retail supplier provider has another internal auditing

procedure that assures facility production agrees to production claims.

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

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

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

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