

Article 5. Electricity Generation Source Disclosure

§ 1390. Scope

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

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

§ 1391. Definitions

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

(1) a reference to the type of fuel used to generate the electricity product offered for sale by ~~available for purchase from a~~ the retail supplier, other than disclosure of net system power; or

(2) a reference to use of an eligible renewable, ~~as defined in this article, as a source to~~ generate, in part or in whole, ~~of~~ the electricity product offered for sale by ~~available for purchase from a~~ the retail supplier, other than ~~that in the~~ disclosure of net system power mix; or

(3) a statement that either a specific attribute of the electricity product or of its use creates an environmental effect.

(b) ~~“Electricity offering” means any electricity product that is made available for sale to and/or sold to end use consumers in California.~~ “Electricity product” means the electrical energy produced by a generating facility that a retail seller offers to sell to consumers in California under terms and conditions specific to an offer or to a tariff. It does not include the provision of electric services on site, sold through an over-the-fence transaction, as defined in Section 218 of the Public Utilities Code, or sold or transferred to an affiliate, as defined in Section 372(a) of the Public Utilities Code.

(c) “Eligible renewable” means a ~~renewable resource technology defined as electricity produced from~~ other than a conventional power source ~~within the meaning of~~ as defined in Section 2805 of the Public Utilities Code, provided that a power source utilizing more than 25 percent fossil fuel may not be included. ~~Eligible renewables include the following subcategories:~~ 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 waste. 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 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 ~~California~~ State Energy Resources Conservation and Development Commission.

(e) “Facility” means one ~~unit~~ or all generating units at an electric generating station.

(f) “Generating unit” means an ~~individual~~ device that converts mechanical, chemical, electromagnetic, or thermal energy into electricity, ~~along with the device’s associated plant and apparatus, and whose~~ and that:

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(1) has an electric output is capable of being separately identified and metered; ~~and that:~~

(~~12~~) is located within the Western Systems Coordinating Council interconnected grid;
and

(~~23~~) is capable of producing ~~and delivering net~~ electrical energy (~~energy in excess of a~~
generation station's internal power requirements).

(g) "Generator" means the ~~owner and~~ initial seller of electrical energy ~~or ancillary services~~ produced by a generating unit.

~~(h) "Historical recorded quarterly basis" means meter data, gathered, edited, validated, and stored in a format deemed acceptable for auditing purposes by any System Operator.~~

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

~~(i) "Large hydroelectric" means power produced from any hydroelectric power project which does not meet the definition of small hydroelectric.~~ 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.

(j) "Local publicly owned electric utility that does not utilize the Independent System Operator" means any of the following entities that ~~is not an Independent System Operator (ISO) metered entity as defined in the ISO Master Definitions Supplement;~~ 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 ~~these agencies~~ 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.

(k) "Net electricity generated" means electricity generated by any generating facility, less any generation used on-site, sold through an over-the-fence transaction, as defined in Section 218 of the Public Utilities Code, or sold or transferred to an affiliate as defined in Section 372(a) of the Public Utilities Code.

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

(lm) “Product-specific written promotional materials that are distributed to consumers” means any paper, electronic, or other medium that contain words pertaining to a specific electricity product being advertised or ~~sold~~ offered and that are distributed ~~directly to end use~~ consumers. It does not include ~~materials distributed~~ advertisements and notices in general circulation media, ~~such as newspapers and other print media, television, and radio programs, and electronic media that are provided to the general public through subscription or distribution and that have a general purpose or interest unrelated to a specific electricity product or provider.~~

(mn) “Report electronically” means to provide files in either a database or spreadsheet format that can be read ~~in~~ by the most recent version of either Microsoft™ Excel ~~5.0~~ or Microsoft™ Access ~~2.0~~. ~~If those files are provided to the Commission, they shall be provided via E-mail or mail to the Energy Commission Docket Office, and if the entity submitting the files wishes to request a confidential designation, the files shall be clearly marked “Confidential Electricity Generation Source Disclosure”.~~

(no) “Retail supplier” means ~~every~~ an entity that ~~makes an electricity offering~~ offers an electricity product for sale to ~~end use~~ retail consumers in California.

(op) “Scheduling Coordinator” means any entity certified by the Independent System Operator for the purposes of undertaking the functions specified in Section 2.2.6 of the Independent System Operator Tariff. (Restated and Amended Tariff of the California Independent System Operator Corporation, August 15, 1997)

~~(p) “Small hydroelectric” means power produced from any hydroelectric power project which is located at the site of any existing dam, which uses the water power potential of such dam, or proposes to utilize natural water features for the generation of electricity, without the need for any dam or impoundment and which has not more than 30,000 kilowatts of installed capacity per turbine and has a power production capacity which, together with any other facilities located at the same site is not greater than 80 megawatts.~~

(q) “Specific purchases” means an electricity transactions which ~~are~~ is traceable to specific ~~generation sources~~ generating facilities ~~by any auditable contract trail or equivalent, such as a tradable commodity system, that~~ and that provides commercial verification that the ~~electricity source~~ generating facilities ~~claimed has~~ have generated ~~and been~~ electrical energy that has been sold once and only once to ~~specific~~ retail consumers.

(r) “System Operator” means the Independent System Operator ~~with responsibility for the efficient use and reliable operation of the transmission grid, as provided by Public Utilities Section 245~~ as defined in subsection (h) of this section, or a local publicly owned electric utility

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that does not utilize the Independent System Operator, as defined in subsection (j) of this section.

~~(c) Additional definitions may be provided in other sections of this Article.~~

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

§ 1392. Generation Disclosure

(a) Method and Timing of Submissions

(1) All submissions to the System Operator required by this section may be provided to the System Operator by the generator directly or through a Scheduling Coordinator.

(2) Each G~~enerator~~s that provides meter data to a System Operator, either directly or through a Scheduling Coordinator, shall report the information specified in subsection (b) to the System Operator within forty-five days of the end of each calendar quarter beginning with the quarter ending ~~September 30~~ December 31, 1998.

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

(1) General Information:

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

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

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

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(+2) Generation Information: Generators shall report electronically the electricity generated in kilowatt hours by hour by each generating ~~unit or~~ facility, ~~by~~ in each month of the preceding quarter. ~~on a historical recorded quarterly basis to the System Operator.~~

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(23) 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. ~~by month on a quarterly basis, and may report the amount of fuel consumed.~~

(B) For generating facilities using more than one fuel type, generators shall report electronically the fuel consumed by in each month ~~on a quarterly basis~~ of the preceding quarter as a percentage of electricity generation, ~~and may report the amount of fuel consumed.~~

(C) Fuel shall be reported ~~as one of~~ in the following categories:

1. Eligible Renewable, which shall be reported ~~as one of~~ in the following subcategories:

a. Biomass and waste

b. Geothermal

c. Small hydroelectric

d. Solar

e. Wind

2. Coal

3. Natural gas

4. Large hydroelectric

5. Nuclear

6. Other

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(c) System Operator Responsibilities

(1) ~~Energy Commission Access~~

~~(A)~~ Subject to the limitations described in subsection ~~(bc)(12)(B)~~ of this section, ~~the System Operator shall provide the Energy Commission access to all generation and fuel use data provided to the System Operator by generators and Scheduling Coordinators, pursuant to subsection (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 information access shall be provided to the Energy Commission within 60 days of the end of each calendar quarter.~~

(B2) Limitations on Energy Commission Access

~~1.(A)~~ The System Operator is not required to provide the Energy Commission with any information submitted under subsection ~~(b)(23)~~ of this section that specifies the amount of fuel consumed at a generating facility.

~~2.(B)~~ The System Operator is not required to provide the Energy Commission with any information submitted under subsection ~~(b)(23)~~ of this section for out-of- state power.

~~(2) The System Operator shall keep the information provided under subsection (a) of this section for at least three years.~~

(d) The following requirements apply to generation and fuel information that is reported for any generation ~~identified by a retail supplier who makes a claim of specific purchases under the provisions of Public Utilities Code section 398.4~~ that is sold in an electricity 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 ~~the~~ generation or fuel information for electrical energy that is sold in an electricity product for which a claim of specific purchases is made is not reported to the System Operator either directly or through a Scheduling Coordinator, pursuant to subsection (b) of this section, the generator shall report electronically the information specified in subsection (d)(2)(A) - (C) of this section ~~must be provided directly~~ to the Energy

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Commission by March 1, of each year beginning in 1999 ~~and every year thereafter,~~ for each generating facility that generated such electrical energy in California. ~~unless~~ If the information is provided to the Energy Commission in another filing, ~~in which case~~ 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.

~~(A) Generator name, facility name and number, and facility location;~~

(A) General Information:

1. Name and phone number of person to contact about the submission;

2. Generator name, address, and an identification number provided by the System Operator, or in the event that the System Operator does not provide an identification number to the generator, by the Energy Commission;

3. For each generating facility, the generating facility name, location, either by street address or by longitude and latitude, and an identification number provided by the Western Systems Coordinating Council, or, in the event that the Western Systems Coordinating Council does not provide an identification number to the generating facility, by the Energy Commission.

~~(B) Electricity generated by the generating facility in kilowatt hours, ~~on an annual basis, for~~ in the previous calendar year; and~~

~~(C) Type of fuel consumed by the generating facility as a percentage of electricity generation ~~for~~ in the previous calendar year, using the categories specified in subsection (b)(~~23~~)(C) of this section.~~

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

NOTE: Authority cited: Section 25213, Public Resources Code; Sections 398.4, Public Utilities Code. Reference: Section Sections 25216, 25216.5, Public Resources Code; Sections 398.3 - 398.5, Public Utilities Code.

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§ 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(1).

~~(2) “Information panel” means the portion of the advertisement, bill, or reporting page that contains the power content label.~~

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

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

(35) “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(c).

(57) “Eligible Renewable” means eligible renewable as defined in section 1391 of this article.

(b) Pursuant to Section 398.4 of the Public Utilities Code Section 398.4, ~~all each~~ retail suppliers ~~that make an offering to sell electricity that is consumed in California~~ shall disclose to consumers the fuel type of the electricity generation source for mix each electricity product offered., using the schedule and format specified in this section. For each electricity product, the retail supplier shall do the following:

(1) A retail supplier that makes ~~any~~ claim of specific purchases shall in all power content labels:

~~(A) Disclose all electricity generation sources that differ from net system power~~
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 in its power
content label, as prescribed in this section; and

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

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

~~(2) A retail supplier that does not make any claims of specific purchases shall disclose~~
only net system power in its power content label.;

(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 r Retail suppliers~~ shall disclose the information required in this section to consumers according to the following schedule:

~~(1) Information provided to consumers pursuant to Public Utilities Code section~~
~~398.4(b)~~ Marketing disclosures shall be provided in all product-specific written
promotional materials that are distributed to consumers, as defined in this Article,
subsection (m) of section 1391 of these regulations using the power content label.

~~(2) Information provided to consumers pursuant to Public Utilities Code section 398.4(c)~~
Quarterly disclosures shall be provided in writing to consumers of the electricity product
by the end of the first complete billing cycle for each quarter, beginning with the first
complete quarter after the effective date of these regulations, using the power content
label. For purposes of this section, quarters shall begin in January, April, July, and
October of each year.

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~~(3) Retail suppliers that make a claim of specific purchases must provide customers with an annual statement showing actual specific purchases for the previous calendar year. Annual disclosures shall be provided in writing to consumers of the electricity product on or before April 15, of each year beginning in 1999 and annually thereafter, as prescribed in this section.~~

(d) ~~Each r~~Retail suppliers shall ~~include~~ disclose the following information in ~~their~~ all power content labels about the fuel mix of the electricity product and of net system power:

~~(1) If a retail supplier makes a claim of specific purchases, the~~ The power content labels appearing on product specific written promotional materials that are distributed to consumers and in quarterly disclosures to customers containing general disclosures shall meet the following requirements.

~~(A) The F~~fuel mix information for the specific purchases being claimed shall be provided, based on the electricity projected to be sold for the current calendar year, shall be provided using the following fuel type ~~names specified~~ 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
7. Net System Power

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

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1. Biomass and waste
2. Geothermal
3. Small hydroelectric
4. Solar
5. Wind

~~(C) The fuel mix information for net system power, as published by the Energy Commission for the previous calendar year shall be provided, using the fuel type names specified and in the following order:~~

- ~~1. Renewable~~
 - ~~a. Biomass and waste~~
 - ~~b. Geothermal~~
 - ~~c. Small hydroelectric~~
 - ~~d. Solar~~
 - ~~e. Wind~~
- ~~2. Coal~~
- ~~3. Large hydroelectric~~
- ~~4. Natural gas~~
- ~~5. Nuclear~~
- ~~6. Other~~

(C) Calculation. For each electricity product, 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 formula $w_1(x) + w_2(y)$, where “ w_1 ” is the percentage of electricity in this electricity product the retail supplier expects to provide through specific purchases, “ x ” is the percentage contribution for a given fuel category or subcategory to total specific purchases for that electricity product, “ w_2 ” is the percentage of electricity in the electricity product the retail supplier expects to provide through sources other than specific purchases, and “ y ” is the percentage contribution for the fuel category or subcategory to the net system power fuel mix.

~~(2) If a retail supplier does not make a claim of specific purchases, the power content label containing the information required pursuant to Public Utilities Code sections 398.4(b) and 398.4(c) shall contain only the information described in subsection (d)(1)(C) of this section.~~

~~(32) If a retail supplier does makes a claim of specific purchases, the annual disclosure of actual specific purchases shall consist of an information panel containing a comparison of information about the fuel mix of the actual specific purchases in the previous calendar year to prospective disclosures made in that year, as described in section (c). Actual specific purchases shall appear by fuel type name, rounded to the nearest percent as specified in subsection (d)(1)(A) of this section, including the subcategories listed in subsection (d)(1)(C)1. of this section.~~ the fuel mix of the electricity product sold to consumers during the previous calendar year. In addition, if the percentage of any fuel type category or subcategory contained in any general disclosure made during the previous calendar year for that electricity product varies by more than plus or minus five percentage points from the percentage provided in the annual disclosure, the fuel mix information displayed in the general disclosure that varies the most from this annual disclosure shall be displayed.

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

(B) If the fuel mix information for the electricity product contained in a general

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

(e) ~~Each r~~Retail suppliers 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 for~~their power content labels:~~

(1) All information contained in the ~~information panel~~ 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 information panel, 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 ~~direct the consumer to the label,~~ tell the consumer where the power content label can be found, the note shall appear in a font 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 ~~contained in the information panel~~ shall be set off in a box by use of hairlines ~~and~~ 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) Upper and lower case letters;~~

~~(C) At least one point leading (i.e. space between two lines of text);~~

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

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

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

~~(5) The headings required by subsections (e)(6), (7), and (8) of this section shall be highlighted by bold or extra bold type that prominently distinguishes these headings from other information. No other information shall be highlighted.~~

(5) Immediately below the power content label, the following note shall appear: “For specific information about this electricity product, contact [Company Name]. For general information about the Power Content Label, contact the California Energy Commission at 1-800-555-7794 or www.energy.ca.gov/consumer”, where “Company Name” is the name of the retail supplier. This note shall appear in a type size no smaller than 8 point.

(6) ~~If specific purchases are being disclosed,~~ The power content label appearing on ~~product specific written promotional materials and in quarterly reports to customers containing general disclosures~~ shall appear in the following format:

(A) The information shall be presented under the identifying heading of “Power Content Label.” ~~This heading shall be referred to in subsequent paragraphs as the “primary heading,” and it shall be in bold, uppercase letters, set in a type size larger than all other print type size in the power content label.~~

~~(B) Information on the electricity product being sold shall immediately follow the heading. This information shall be accompanied by the heading “Your Electricity Purchases,” which shall be set in a type size larger than the primary font size but smaller than the font size for the primary heading. Immediately below this heading shall be a subheading that reads: “Power that [Company name] has contracted to provide.”~~

~~1. Fuel content information for the electricity product being sold shall be displayed in a table or other graphic format, and shall be set off from the heading “Your Electricity Purchases” and its subheading with a bar.~~

~~2. Fuel content information for the electricity product being sold shall appear as specified in subsections (d)(1)(A) and (B) of this section. The numbers shall be displayed to the right of the labels, and expressed using a percent sign.~~

~~3. Next to the label “Net System Power,” a clarifying note may be added in parentheses that reads “see table” or “see chart.”~~

~~(C) Information on net system power shall follow to the right of the table described above. This information shall be accompanied by the heading “Net System Power Mix,” which shall be set in a type size larger than the primary font size but smaller than the font size for the primary heading. The heading shall include a footnote marker which refers to the footnote as described in subsection (e)(6)(D)(1) of this section.~~

~~1. Fuel content information for net system power shall be displayed in a table or other graphic format, and shall be set off from the heading “Net System Power Mix” with a bar.~~

~~2. Fuel content information for net system power shall appear as specified in subsection (d)(1)(C) of this section. The numbers shall be displayed to the right of the labels, and expressed using a percent sign.~~

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

~~1. The first footnote shall read: “The State of California determines this net system power mix annually; your actual purchases may vary. [Company name] does not make any additional claims about this power.”~~

~~2. The second footnote shall read: “Renewable power, according to California law, includes power from biomass and waste, geothermal, small hydroelectric (\leq 30 MW), solar, and wind technologies.” This footnote may be omitted if the same note appears in accompanying text.~~

~~(E) An example of a graphic representation of a power content label that meets the requirements for prospective disclosures made by a retail supplier that makes a claim of specific purchases is included on page 1 of Appendix A to these regulations.~~

~~(7) If specific purchases are not being disclosed, the power content label appearing on product specific written promotional materials and in quarterly reports to customers shall appear in the format described in subsections (e)(6)(A) and (e)(6)(C) of this section.~~

~~(A) Footnotes shall appear at the bottom of the power content label as described in subsection (e)(6)(D) of this section.~~

~~(B) An example of a graphic representation of a power content label that meets the requirements for prospective disclosures made by a retail supplier that makes no claims of specific purchases is included on page 2 of Appendix A to these regulations.~~

(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 and shall be shaded. Headings shall appear in reverse type.

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

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

4. The second column shall display the fuel mix information for the electricity product being sold. The first row of the second column shall display a heading of the product name, bolded and in all capital letters. Immediately next to the product name in the first row of the second column shall be a footnote marker, directing the reader to the footnote specified in subsection (e)(6)(C)(1). Immediately below the product name shall be the subheading “(projected)”. The subsequent rows of the column shall display the fuel mix information for the electricity product being sold. The fuel mix information shall be rounded to the nearest percent, expressed using a percent sign, and may, but need not, include the percentages for the eligible renewable subcategories. The final row for this column shall read “100%.” The percentages for the categories shall be aligned and displayed in bold, and the percentages for the eligible renewable subcategories, if any, shall be aligned to the right of the percentages for the categories. If the

retail supplier is not making a claim of specific purchases for this electricity product, the fuel mix information displayed for the electricity product shall be identical to that displayed for net system power.

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

6. The column farthest to the right shall contain information about the fuel mix of net system power. The first row of the column shall contain the heading “[Year] CA Power Mix”, bolded and in all capital letters, where [Year] refers to the previous calendar year. 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 as adopted by the Energy Commission for the previous calendar year, 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, but 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 suppliers.”, where “Percentage A” is the percentage of electricity in this electricity product the retail supplier expects to provide through specific purchases, and “Product Name” is the name of the electricity product. If fuel mix information for more than one product is provided in the power content label, the footnote shall list for each electricity product the percentages of the product that the retail supplier expects to provide through specific purchases.

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

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

(87) ~~If a~~ Each retail supplier shall provide a power content label containing an annual disclosure for each electricity product for which it made ~~does make~~ a claim of specific purchases during the previous calendar year, using the following format: ~~the annual disclosure of actual specific purchases shall consist of an information panel containing a comparison of information about the fuel mix of the actual specific purchases in the previous calendar year to prospective disclosures made in that year. The annual disclosure may not appear on the same page as any prospective disclosure for the current calendar year.~~

(A) The information shall be presented under the identifying heading of “~~Annual Report: Power Content Label.~~” ~~This heading shall be referred to in subsequent paragraphs as the “primary heading,”~~ and it shall be bolded and in all capital letters, set in a type size larger than all other ~~print~~ 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) ~~Information on the electricity offering actually sold during the previous calendar year shall immediately follow the heading. This information shall be accompanied by the heading “Annual Report: Your Electricity Purchases,” which shall be set in a type size larger than the primary font size but smaller than the font size for the primary heading. Immediately below this heading shall be a~~

subheading that reads: “Power that [Company name] provided for calendar year [calendar year]”. 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. Fuel content information for the electricity offering sold during the previous calendar year shall be displayed in a table or other graphic format, and shall be set off from the heading “Annual Report: Your Electricity Purchases” and its subheading with a bar.~~

~~2. Fuel content information for the electricity offering sold during the previous calendar year shall be presented as specified in subsection (d)(1)(C) of this section. The numbers shall be rounded to the nearest percent, displayed to the right of the labels, and expressed using a percent sign.~~

1. The first row of the table shall contain column headings and shall be shaded. Headings shall appear in reverse type.

2. A shaded 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 Fuel 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) If the fuel mix information contained in any prospective disclosure made during the previous calendar year varies by more than ten percentage points from the actual mix, the fuel mix for each such prospective disclosure shall follow, with the heading “Electricity Mix Projected for [previous calendar year], which shall be set in a type size larger than the primary font size but smaller than the font size for the primary heading. Any discrepancy of more than ten percentage points shall be bolded or highlighted and the information panel shall contain an explanation of the discrepancy.~~

~~(D) If no fuel mix information contained in any prospective disclosure made during the previous calendar year varies by more than ten percentage points from the actual mix, then the information panel shall contain the following statement: “The fuel mix [Company name] projected for the previous calendar year was within ten percentage points of the actual fuel mix provided.”~~

(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 Fuel Mix”, bolded and in all capital letters. Immediately next to the heading “Actual Fuel Mix” shall be a footnote marker, directing the reader to the footnote specified in subsection (e)(6)(C)1.c. The subsequent rows shall display the fuel mix information for the electricity product displayed in the general disclosure that varies the most from this annual disclosure. This information shall be displayed in the format specified in subsection (e)(6)(B)4. of this section.

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

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

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

(E) An example of ~~a graphic representation of~~ a power content label that meets the requirements for an annual disclosure not requiring inclusion of any previous year’s ~~prospective~~ general disclosures is included on page ~~3~~ 4 of Appendix A to these regulations. An example of a graphic representation of a power content label that meets the requirements for an annual disclosure requiring inclusion of a previous year’s general disclosure is included on page 5 of Appendix A 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; Section 398.4, Public Utilities Code.

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

(a) Retail Supplier Report

(1) ~~Any~~ Each retail supplier that ~~identifies~~ makes a claim of specific purchases ~~under the provisions of Public Utilities Code section 398.4 must~~ shall report the information

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contained in this section to the Energy Commission on March 1, of every year beginning in 1999 and annually thereafter.

(b2) For each ~~separate~~ ~~electricity offering~~ product offered for sale in California, each retail suppliers shall report electronically the following information:

(A) Registered Energy Service Provider Identification Number as assigned by either the Public Utilities Commission or the Energy Commission.

(1B) Kilowatt hours purchased, by generating facility and fuel type by the categories specified in subsection (b)(3)(C) of section 1392 of these regulations, during the previous calendar year; including:

1. Generator identification number provided by the System Operator, or in the event that the System Operator does not provide an identification number to the generator, by the Energy Commission;

2. The generating facility identification number provided by the Western Systems Coordinating Council, or, in the event that the Western Systems Coordinating Council does not provide an identification number, by the Energy Commission for each generating facility that generated electrical energy that is claimed by the retail supplier as a specific purchase.

(2C) Kilowatt hours sold at retail, by fuel type, during the previous calendar year.; and

(3D) ~~The information disclosed to consumers about the offering, including whole samples of each separate disclosure to consumers about the product in the previous calendar year.~~ A sample of each general disclosure provided to consumers pursuant to Section 1393 of these regulations during the previous calendar year.

(e3) Retail suppliers shall provide to the Energy Commission the information specified in subsections (a)(2)(B) and (C) of this section in a tabular spreadsheet or database format that allows identification of separate fields or cells for the information by product, generating facility, and fuel type. Retail suppliers may provide the information specified in subsection (a)(2)(B) 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. This may include a statement by a scheduling coordinator that describes the

total MWhs of a pool of renewable power purchased by that scheduling coordinator by fuel type, as specified in subsection (B)(C)(3) of section 1392 of these regulations, by generating facility, and specifies the amount of electrical energy from that pool sold to the retail supplier. Such a statement shall be accompanied by an attestation, made by a certified public accountant who is a member of the American Institute of Certified Public Accountants that the auditor performed an audit, with an error band of plus-or-minus five percent, using auditing standards described in the Statement on Auditing Standards, published by the American Institute of Certified Public Accountants and concluded that the statement contains no material misrepresentations of fact.

(b) Audit

(1) Each retail supplier who makes a claim of specific purchases shall provide an attestation to the Energy Commission from a certified public accountant who is a member of the American Institute of Certified Public Accountants that:

(A) The auditor performed an audit, with an error band of plus-or-minus five percent, using auditing standards described in the Statement on Auditing Standards, published by the American Institute of Certified Public Accountants, including statistical sampling techniques if and when appropriate, of the following information provided by the retail supplier for each electricity product offered for sale by the retail supplier during the previous calendar year:

1. The generating facility identification number provided by the Western Systems Coordinating Council, or, in the event that the Western Systems Coordinating Council does not provide an identification number, by the Energy Commission for each generating facility that generated electrical energy that is claimed by the retail supplier as a specific purchase.

2. The fuel type or types, as specified in subsection (b)(3)(C) of Section 1392 of these regulations, used by each generating facility identified in subsection (b)(1)(A)1. of this section.

3. Contracts necessary to trace the sale of electrical energy generated by the generating facilities identified in subsection (b)(1)(A)1. of this subsection from the generator to the retail supplier.

4. The kilowatt hours of electricity purchased by customers from the

retail supplier.

(B) That the audit performed pursuant to subsection (b)(1)(A) of this section demonstrates that the information provided to the Energy Commission pursuant to subsection (a)(2)(B) and (C) of this section and the annual report required by subsection (e)(7) of section 1393 of these regulations contains no material misrepresentations of fact.

(C) For those retail suppliers that provide the information specified in subsection (a)(2)(B) of this section through an audited statement about a renewable pool, this audit need not address the information required under that subsection.

(2) The attestation shall be provided to the Energy Commission on or before June 1 of each year, except that in 1999, the attestation shall be provided no later than July 31.

(d) The Commission may on its own motion, or as a result of a request from a member of the public or other agency, investigate ~~audit, at random,~~ electricity transactions claimed as specific purchases to determine whether the transactions are traceable to specific ~~generation sources~~ generating facilities and whether they provide commercial verification that the electricity source claimed has been sold once and only once. In ~~order to verify that the electricity source claimed has been sold once and only once~~ conducting its investigation, the Commission may ~~rely on~~ require the production of commercial documents, such as contracts, invoices, tags, or credits, the audit performed pursuant to subsection (d)(1)(A) of this section, and ~~or on~~ attestations.

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