

**INITIAL STATEMENT OF REASONS  
FOR ADOPTION OF REGULATIONS GOVERNING  
ELECTRICITY GENERATION SOURCE DISCLOSURE**

California Energy Commission  
Docket No. 97-SB-1305

## **INITIAL STATEMENT OF REASONS**

### **I. INTRODUCTION**

The California Energy Commission (Commission) was created by the Warren-Alquist State Energy Resources Conservation and Development Act (Public Resources Code section 25500 et seq.). The Act vests the Commission with a wide range of duties and responsibilities related to the development and conservation of energy resources in California. As the agency responsible for establishing the state's energy policy, the Commission collects, stores, analyzes, and disseminates a broad range of information.

SB 1305, which was enacted earlier this year, imposes a series of new requirements on the Commission. SB 1305 responds to the recent decisions of the California Legislature, the California Public Utilities Commission and the Federal Energy Regulatory Commission to initiate a significant amount of deregulation in California's electric industry. The Legislature intends deregulation to result in lower electricity rates and increased consumer choice in selecting the types and quantities of a broad range of electricity services. The targeted date for inauguration of the new electricity market is January 1, 1998.

In order to ensure consumer access to information about post-deregulation electricity options, SB 1305 imposes disclosure and reporting requirements on a variety of market participants. The Commission is directed to specify guidelines and formats for these requirements on or before January 1, 1998. The legislation also directs the Commission to prepare two annual reports and conduct other activities to assist in implementing the goals of SB 1305.

### **II. DESCRIPTION OF PUBLIC PROBLEM**

Electricity market restructuring is designed to provide consumers with more options in

selecting the electricity they purchase and who they purchase it from. At the same time, however, deregulation has caused concerns about consumer protection issues. During the drafting of SB 1305 earlier this year, legislators considered various options for ensuring that consumers in the new electricity market were protected from fraudulent or misleading promotional efforts, particularly with respect to “green” or “environmentally friendly” marketing claims.

The Legislature responded to these concerns by directing the Commission to specify guidelines and formats for a variety of disclosure requirements related to electricity generation sources. Under SB 1305, retail suppliers must provide information to consumers about the generation sources of the electricity they consume. In an annual report, the Commission is directed to compare this information to actual generation data and information about the electricity purchased and sold by the retail suppliers. The Commission also prepares an annual report specifying the electricity mix for the state that consumers can use to compare to the fuel mix of other prospective sources of electricity. The law directs the Commission to establish the format for the three distinct sets of disclosure and reporting requirements established under the terms of the bill by January 1, 1998. This rulemaking is designed to meet that objective.

On November 5, 1997, the Commission adopted an Order Instituting Rulemaking to adopt new regulations specifying the guidelines for the format and means of disclosure required by SB 1305, and delegated authority to conduct the rulemaking to the Ad Hoc Information Committee (Committee). The proposed action will establish the format for the specific disclosure and reporting requirements mandated under SB 1305. The proposed regulations can be divided into three parts. The first part contains the requirements governing reporting generation information by generators to System Operators and the Commission. The second part contains the requirements governing

disclosure of electricity source information by retail suppliers to consumers. The third part contains requirements governing the reporting of electricity purchase information by retail suppliers to the Commission. In addition, the proposed regulations contain sections establishing the scope of the proposed requirements and a section containing applicable definitions.

The generation disclosure section of SB 1305 requires generation data to be reported to system operators and made available to the Commission. The language in these regulations establishing the format for meeting those requirements is generally worded, because the data collection activities of various system operators are not yet fully developed. The Commission will coordinate additional format requirements with that development, which may require a supplemental rulemaking next year.

The second set of requirements affect retail suppliers and consumers. Under SB 1305, all retail suppliers must provide an estimate to consumers of their generation sources, by fuel type, of the electricity they will provide during the current calendar year. The prospective power mix must be provided in promotional materials and in quarterly statements to the retail suppliers' customers. Retail suppliers can choose to disclose either the state's power mix as determined annually by the Commission, or an estimate of the specific power mix sold by the retail supplier. In addition, retail suppliers who disclose an estimate of their specific mix must, by April 15 of each year, disclose their actual purchases for the previous year to their customers. The third set of reporting requirements mandates that retail suppliers provide detailed information to the Commission about their electricity purchases and sales by March 1 of each year.

The Commission has two additional responsibilities related to these requirements. First, on April 15 of each year, it must issue a report establishing the state's power mix

(referred to as “net system power”).<sup>1</sup> In addition, on October 15 of each year, the Commission must issue a report comparing the generation information provided under SB 1305 with the disclosures made by retail suppliers to consumers and the Commission. These reports will provide additional assurance that consumers receive accurate, reliable, and simple-to-understand information about the generation sources of electricity they consume.

### III. DOCUMENTS AND STUDIES RELIED UPON

The proposed amendments are the result of public comment and staff experience with both data collection and analysis. Staff has made a significant effort to become familiar with the effectiveness of various attempts to provide consumers with useful information in labels and other means of disclosure. The Commission relies on the compilation of public comments and other documents that have been presented in this proceeding and docketed in Docket No. 97-SB-1305. These documents are listed below:

The following filings made with the Federal Energy Regulatory Commission:

California Independent System Operator Schedules and Bids Protocol, Draft 1, September 19, 1997;

California Independent System Operator Settlements and Billing Protocol, Revised October 3, 1997;

California Independent System Operator, Meter Service Agreement for ISO Metered Entities, Draft 1, October 1, 1997

California Independent System Operator, Participating Generator Agreement, Draft 1, October 1, 1997

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<sup>1</sup> On December 3, 1997, the Commission adopted the preliminary net system power report for 1997.

California Independent System Operator, Meter Service Agreement for Scheduling Coordinators, Draft 1, September 19, 1997

California Independent System Operator, Transmission Control Agreement, Appendix D, Master Definitions Supplement , August 15, 1997

Information Disclosure for Electricity Sales, Consumer Preferences from Focus Groups, National Council on Competition and the Electric Industry, July, 1997

Federal Food Labeling Guidelines, 21 C.F.R. § 101.1 et seq.

#### IV. ALTERNATIVES THAT WOULD LESSEN IMPACTS ON BUSINESS, INCLUDING SMALL BUSINESS; MANDATED TECHNOLOGIES

The Commission has been provided an extremely short period of time in which to develop the format of the reporting and disclosure guidelines mandated by SB 1305. Nonetheless, the Committee to whom this rulemaking has been delegated has solicited the comments of staff and affected entities with the specific goal of minimizing the impacts of compliance with SB 1305 requirements. In doing so, it has considered several alternatives to the proposed regulations.

One area in which alternatives were considered is in specifying the quality of generating data provided to system operators and made available to the Commission. The Commission's goal is to ensure that the format specified in these regulations will create data of sufficient quality for the Commission to perform its responsibilities under Public Utilities Code 398.5(e), while imposing no unnecessary requirements on generators. The Commission decided to specify data of a quality already required by the system operator for auditing purposes. The Commission believes that since this level of data quality is already required for settlement of scheduling coordinator accounts, selection of this option is the least burdensome to generators and the system operators. However, the Commission is only specifying this level of quality for generation data, as system operators do not have existing data quality requirements for fuel data. As a result, the Commission did not specify any level of data quality for fuel data, but will monitor the generation disclosures to determine whether such a specification should be added to the regulations at a later date.

A second area in which alternatives were considered is in specifying the means used to report electronically. The Commission considered several options, including secure

internet sites and dedicated modems. The Commission selected provision of files in a database or spreadsheet format that can be read in either Excel 5.0 or Access 2.0. The Commission selected this option because we believed that it would be least burdensome for affected parties. Excel and Access are among the most widely used software programs for spreadsheet or data management applications. Mail and e-mail to the Docket Office were selected for filings made to the Commission because the Docket Office has established procedures to protect confidentiality and to record the arrival of and distribute incoming filings.

A third area in which alternatives were considered is in defining specific purchases. SB 1305 states that if a retail supplier makes a claim that identifies its electricity sources as different from net system power (an estimate of the state's power mix, prepared annually by the Commission), these claims must be disclosed as specific purchases. The statute defines specific purchases as electricity transactions which are traceable to specific generation sources by a mechanism that provides verification that the electricity has been sold once and only once at retail. However, it is not clear what kinds of transactions are included in or excluded from this definition. The Commission is aware of a variety of proposed financial arrangements for the sale and purchases of electricity in the deregulated market whose status under this definition is unclear. The Commission considered a variety of alternatives to clarify this issue, but then decided to use the statutory definition and address the issue in Section 1394 of these regulations, which implements the Commission's responsibilities to examine claims of specific purchases.

Another area in which alternatives were considered is in the capacity threshold for generation information reporting. The Commission considered four alternatives -- no threshold, a 1 MW threshold, a 5 MW threshold, and a 10 MW threshold. The Commission opted to not allow a threshold because the amount of capacity that would be

exempt even under a 1 MW exemption is significant -- 110 MW -- and much of the state's renewable resources that will be reported as specific purchases under SB 1305 is included within this category.

The Commission also considered alternatives for the format of the annual disclosure provided by retail suppliers to consumers. The Commission attempted to strike a balance between two competing objectives. The first is allowing retail suppliers to provide more accurate information to consumers by allowing them to update their prospective disclosures as the calendar year progresses and more accurate information becomes available about the mix of generation that will be sold by the retail supplier during that calendar year. The second objective is providing consumers with a simple-to-understand format for the annual disclosure of actual purchase information. The Commission determined that retail suppliers should provide consumers with both disclosures in the annual statement in order to enable them to make a comparison between prospective disclosure (what the retail supplier told consumers it would purchase) and the actual purchases. However, if the prospective disclosures are amended throughout the year, establishing a clear format for the annual disclosure that allows such a comparison becomes very difficult.

The Commission decided to require inclusion of prospective disclosures where any varies by more than ten percentage points from the actual disclosure. This allows retail suppliers to update their disclosures to make them more accurate. However, because the purpose of SB 1305 is to provide consumers with meaningful information about the sources of electricity they consume, the Commission believes that it is important for retail suppliers to explain the difference between what they promise to provide to their customers and what they in fact provide when the difference is greater than ten percentage points. The Commission picked ten percentage points because less than that

amount could reasonably be expected to result from normal variations in the availability of renewable power. However, differences greater than ten percentage points are more likely to arise from other causes. In those situations, the differences raise a questions as to whether consumers are getting what they pay for, and the Commission believes it is reasonable to require an explanation.

Finally, the Commission considered several alternatives for the specific format of the retail disclosure to consumers. It considered several label designs, but ultimately decided to not mandate a specific design. The proposed regulations do include examples of acceptable formats, but allow retail suppliers the choice of label design.

The Commission expects to consider additional alternatives during the rulemaking proceeding. Other than the alternatives already incorporated into the proposal, the Commission is not aware of alternative proposals that would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

The proposed regulations do not include any mandated technologies or prescribed procedures. In virtually every instance, options for meeting the requirements of SB 1305 are provided.

#### V. EFFORTS TO AVOID UNNECESSARY DUPLICATION WITH FEDERAL REGULATIONS

There is no comparable Federal law, as states have the sole authority to regulate the terms and conditions of retail electricity services. The Ad Hoc Information Commission did review federally adopted food labeling and disclosure requirements (e.g., nutrition labels)

for guidance in drafting the format of these disclosure and reporting requirements.

## VI. DISCUSSION OF SPECIFIC REQUIREMENTS

The following is a list of each of the Commission's regulations implementing SB 1305, along with a summary of and the rationale for the proposal:

### **§ 1390. Scope**

The purpose of this section is to establish the scope of the regulations. It is necessary to ensure that readers understand that the format specified in this article apply only to the disclosure and reporting requirements mandated by SB 1305.

### **§ 1391. Definitions**

The purpose of this section is to provide definitions necessary to understand the terms used in those sections of the article that specify the format to be used for disclosure and reporting.

Claim that identifies any of a retail supplier's electricity sources as different from net system power: The definition of "claim that identifies any of a retail suppliers' electricity sources as different from net system power" is provided because it establishes the types of statements that will trigger the disclosure requirements imposed on retail suppliers by the terms of SB 1305. Without the definition, retail suppliers may not know which of their advertising or promotional claims are subject to these requirements. The proposed regulation makes it clear that the only claims that activate the disclosure

requirements are those that contain a reference to the type of fuel or type of technology. The Commission selected this definition because it mirrors language in SB 1305 itself which describes electricity sources in terms of fuel types and technology categories.

The Commission also decided to include a statement that disclosure of net system power is not a claim mandating disclosure of specific purchases. The Commission added this statement to be sure that retail suppliers understand that they can choose to either disclose specific purchases or net system power.

Electricity offering: The definition of “electricity offering” is provided because it is used in the statute and is susceptible of various interpretations. For example, several municipal utilities have inquired of Commission staff whether the term applies to their tariffs. Because other sections of the statute clearly state that the disclosure provisions apply to every retail supplier offering to sell electricity in California, the Commission has provided a definition that includes all offers to sell electricity, whether under the terms of a tariff or under another purchase arrangement.

Eligible renewable: The definition of “eligible renewable” is provided because it is used in the statute and in the regulations. The definition is the same as that in the statute; the Commission decided to include it in the regulations because it is an integral part of the program established by SB 1305. The Commission believes it is important to have the definition in the regulations that establish the format for the disclosure and reporting requirements so that affected parties can find all of the critical elements of the description of the program in one place.

Energy Commission: The definition of “Energy Commission” is provided because we are referred to frequently in the regulations and “Energy Commission” is an easier reference

than “Energy Resources Conservation and Development Commission”.

Facility: The definition of “facility” is provided because the term facility is used in section 1392 of the proposed regulations to specify the source of the generation and fuel data required by the statute , as well as in the definition of a “local publicly-owned electric utility that does not utilize the Independent System Operator”. It also appears in section 1393, which governs disclosure to consumers.

The Commission considered the meaning of “facility” and whether the requirements in SB 1305 should apply to the aggregate of all units at a power generating station or to individual units. The Commission believes that it will be able to collect the information necessary to complete the annual comparison report, required under Public Utilities Code section 398.5(e) regardless of whether the term refers to multiple units at a single power generating station individually or in the aggregate. For the purpose of these regulations we have defined the term “facility” in such a way that affected parties should understand that it can refer to either and that generation reporting requirements can be met either on a unit-by-unit basis or a facility-wide basis.

Generating Unit: The definition of “generating unit” is provided because affected parties expressed confusion to the Commission about whether the use of the term “generator” in SB 1305 referred to the owner of a generating unit or the unit itself. The Commission is avoided carrying that confusion forwards into the regulations by defining “generator” and “generating unit” separately, thereby distinguishing between the device that converts energy into electricity from the owners of the units. This provide necessary clarity in section 1392 which addresses the source of the generation data and the responsibility for providing that data.

Generator: The definition of “generator” is provided because of the confusion referred to in the discussion of the necessity for a definition of “generating unit”. For these regulations, the Commission defined this term to mean the seller of energy or ancillary services produced by a generating unit. The definition is the same as that found in the Master Definitions Supplement of the Transmission Control Agreement filed with the Federal Energy Regulatory Commission (FERC) by the Independent System Operator (the document that contains the definitions used in establishing the responsibilities of the Independent System Operator). The Commission believes it is important for these regulations to be as consistent as possible with rights and responsibilities created by the restructuring activities approved by FERC.

Historical recorded quarterly basis: The definition of “historical recorded quarterly basis” is provided because the interpretation of that term determines the quality of generating data provided to system operators and made available to the Commission. The Commission’s goal is to ensure that the data specified is of sufficient quality for the Commission to perform its responsibilities under Public Utilities Code 398.5(e), while imposing no unnecessary requirements on generators. The Commission decided to specify data of a quality already required by the system operator for auditing purposes. The Commission believes that since this level of data quality is already required for settlement of scheduling coordinator accounts, selection of this option is the least burdensome to generators and the system operators.

Large hydroelectric: The definition of “large hydroelectric” is provided because the statute distinguishes between large and small hydroelectric facilities for purposes of retail disclosure and qualification as a renewable resource, but does not provide a definition. The Commission has proposed defining “large hydroelectric” as all hydroelectric generation other than “small hydroelectric”, which is defined in terms of capacity. The

rationale for selection of the definition of “small hydroelectric” is found in the discussion of that definition.

Local publicly owned electric utility that does not utilize the Independent System Operator: The definition of “local publicly owned electric utility that does not utilize the Independent System Operator” is provided because the term is not clear on its face. The intent of SB 1305 was to ensure that the term “system operator” included all entities that would be collecting generation data in managing a transmission system for use in the comparison report required under Public Utilities Code section 398.5(e) and the net system power report required under Public Utilities Code section 398.5(f). In selecting a definition that includes all local electric utilities that are not “ISO metered entities”, the Commission has proposed a definition that includes only those entities that will collect the necessary data. Data for all other generation will be collected by the Independent System Operator, regardless of whether it is owned by a local electric utility or located within the service area of a local electric utility.

Out-of-State power: The definition of “out-of-state power” is provided because it is used in both SB 1305 and the proposed regulations, and is susceptible of several interpretations. The Commission definition includes both wholesale and retail power because the statute provides access to data for out-of-state power at the point where it is metered, where it is impossible to distinguish between wholesale and retail power.

Product-specific written promotional materials that are distributed to consumers: The definition of “product-specific written promotional materials that are distributed to consumers” is provided because the term is used in SB 1305 to describe what types of marketing efforts are subject to the disclosure requirements of the law. The law requires disclosure in such materials, but exempts advertisements and notices in “general

circulation media”. This regulation more precisely defines these requirements. The definition includes electronic media as well as paper advertisements in order to cover product-specific faxes, e-mails and information on web-sites. The definition includes the term “other medium” to cover non-paper promotions that are distributed to consumers. It requires that the advertisement have words that pertain to a specific product and that distribution be directed to end-use consumers, because the disclosure requirements themselves are designed to provide retail or end-use consumers with information about particular electricity products.

The definition reiterates the statutory exemption of advertisements or promotions in general circulation media. The regulation provides language clearly indicating that the “general circulation media” exemption is applicable to all types of materials, including non-product specific promotions over the internet, such as those found in banners or similar advertisements. The phrase “general purpose or interest unrelated to a specific electricity product or provider” was selected to clarify that materials such as a “magazine” developed as an advertisement for a specific product or an electricity provider’s company newsletter does not qualify as general circulation media and is therefore subject to the disclosure requirements.

Report electronically: The definition of “report electronically” is provided because affected parties will need to know exactly how to provide the data required to be reported by the statute. The Commission selected a definition that allows use of database or spreadsheet format that can be read in either Excel 5.0 or Access 2.0. The Commission selected this option because we believed that it would be least burdensome for affected parties, as Excel and Access are among the most widely used software programs for spreadsheet and data storage applications. For information provided directly to the Commission, mail or e-mail to the Commission’s docket office is specified, with

provision for designation of confidential data. Mail and e-mail to the Docket Office were selected because the Docket Office has established procedures to protect confidentiality and a significant amount of the data that will be provided is confidential under SB 1305.

Retail supplier: The definition of “retail supplier” is provided because it is retail suppliers that are required under the statute to disclose the generation sources of the electricity they offer for sale. The Commission notes that the statute is intended to provide all consumers of electricity in California with information about the generation sources of electricity that are available for sale. For this reason, the Commission defined “electricity offering” to include all electricity products available for retail purchase in California. The definition of “retail supplier” includes every entity that makes an “electricity offering”, in order to ensure that all offerings are included, and that retail suppliers understand their obligation to provide the mandated disclosures.

Scheduling coordinator: The definition of “scheduling coordinator” is provided because the regulations specify that generation data can be provided to system operators through scheduling coordinators. Scheduling coordinators are the entities actually responsible for submitting balanced schedules of supply and demand to the Independent System Operator, and will collect much of the generation data identified in SB 1305. The Commission selected the definition from the Transmission Control Agreement, Appendix D, Master Definitions Supplement of the Restated and Amended Tariff of the California ISO Corporation, filed with the Federal Energy Regulatory Commission (FERC) by the Independent System Operator, August 15, 1997. The Commission believes it is important for these regulations to be as consistent as possible with rights and responsibilities created by the restructuring activities approved by FERC.

Small hydroelectric: The definition of “small hydroelectric” is provided because the

power from those facilities are included in the eligible renewable category under the statute, while large hydroelectric facilities are not. The Commission picked a definition that is consistent with various definitions in both Public Utilities Code section 2805, the Federal Power Act (16 USCA § 791 et seq.) and the Public Utilities Regulatory Policies Act (16 USCA § 2601 et seq.). Conventional technologies under the Public Utilities Code, qualifying facilities under the Federal Power Act, and hydroelectric facilities eligible for federal assistance under the Public Utilities Regulatory Policies Act impose a 30 megawatt limit; however, PURPA regulations allow some aggregating of the capacity of individual units at a single site (18 C.F.R. section 292.204). The Commission is using the 30 megawatt limit for individual turbines, but allowing aggregation to 80 megawatts at a single site to provide the greatest consistency with the various provisions of federal and state law.

Specific purchases: The definition of “specific purchases” is provided because it is a critical element of the program established by SB 1305. The regulations use a definition of the term “specific purchases” that is taken directly from SB 1305. (The specification of data requirements that is provided in the statutory definition is not reiterated in the regulation, as that is addressed in another section of the regulations.) The term is added so that affected parties can find all of the critical elements of the description of the program in one place.

System operator: The definition of “system operator” is provided because system operators are key participants in the program established by SB 1305, collecting generation data and making it accessible to the Commission. The Commission decided to include the statutory definition so that affected parties can find all of the critical elements of the description of the program in one place.

**§ 1392.                      Generation Disclosure**

This section contains the requirements for reporting generation and fuel information. This information is used by the Commission to complete an annual report comparing information provided by retail suppliers to consumers about the generation sources of electricity they offer for sale and information provided to the Commission about their actual sales and purchases of electricity and an annual report specifying net system power.

Section 1392(a) provides guidance for the method and timing of disclosure. Subsection (a)(1) states that submissions to a system operator may be made either directly or through a scheduling coordinator. At the time that SB 1305 was drafted, the precise flow of information between scheduling coordinators, who are responsible for providing a balanced schedule of demand and supply to the system operators, who are responsible for managing the use of transmission system, was not clear. Even as the January 1, 1998 start date for the deregulated market draws near, the exact nature of the information exchange necessary for smooth functioning of the market is still not fully known. However, during the past few months it has become clear that some the specific generation data needed to implement the terms of SB 1305 will be provided by generators to system operators through scheduling coordinators, who will aggregate the data before it is provided to system operators.

In a situation in which a scheduling coordinator combines generation from multiple generating units for purposes of providing a schedule to the system operator, the system operator will not have data indicating how much each of the combined units, one or more which may be claimed as generation traceable to specific source under the terms of SB 1305, generated individually. If any such unit is claimed as a specific purchase, accessing only the aggregated data will not allow the Commission to provide a comparison of claims

made by retail suppliers with actual generation data, as anticipated by Public Utilities Code section 398.5(e), and will deprive the Commission of information needed to prepare the annual net system power report. (Public Utilities Code section 398.5(f)).

However, by allowing generators to provide the facility-specific information through scheduling coordinators to the system operator, the Commission is ensuring that the data necessary to complete the mandated reports can flow from generators through scheduling coordinators to system operators with a minimum amount of reporting burden. Generators need only report the generation information to a scheduling coordinator, and scheduling coordinators can provide both the disaggregated and aggregated data they possess to the system operator at the same time.

Subsection (a)(2) provides the date that the reporting must commence. The statute states that these requirements shall be effective “January 1, 1998, or as soon as practicable thereafter” (Public Utilities Code section 398.3(a)); the Commission believes that the quarter ending September 30, 1998 will be the first full quarter after the effective date of these regulations.

Section 1392(b) specifies the content and format of information submitted to the system operator. Subsection (b)(1) and (2) are taken directly from the statute; they are reiterated in the regulations in order that all the reporting requirements can be found in one place. The Commission selected electronic reporting in order to simplify both the filing by retail suppliers and access to the information by Commission staff. As stated in the discussion under the definition of “report electronically”, use of database or spreadsheet format that can be read in either Excel 5.0 or Access 2.0 should be the least burdensome for retail suppliers, as Excel and Access are among the most widely used software programs for spreadsheet and data storage applications. The listing of fuel types in subsection

(b)(2)(C) is also taken directly from the statute; it is reiterated here, so that the disclosure made by generators will match that required of retail suppliers under the terms of SB 1305. If generators reported generation using other categories of fuel, the comparison of the generation data to that disclosed by retail suppliers to consumers and to the Commission would be meaningless.

Section 1392(c) specifies the responsibilities of the system operators with respect to the reported data. The Commission access permitted in subsection (c)(1) is that specified in the legislation itself. The regulations require system operators to provide either a disk or electronic access. The Commission included these options in the regulations in order to provide system operators flexibility in meeting their responsibilities under SB 1305. The regulations also specify that the information shall be provided within 60 days of the end of each quarter. 60 days was selected because the Commission believes that a 60-day period could accommodate all of the options under discussion at the time the regulations were drafted about the appropriate length of time required to settle scheduling coordinator accounts (which will contain the finalized data used by the Commission for its report).

Subsection (c)(2) requires system operators to keep the information provided to it under the terms of SB 1305 for at least three years. The Commission believes this is a reasonable balance between the desirability of maintaining files with data for past years in the event the Commission or other entity is required to conduct an investigation of the validity of specific generation claims, and the burden associated with maintaining such files.

Section 1392(d) imposes reporting requirements for any generation claimed by a retail supplier as a specific purchase. As discussed earlier in this statement of reasons, at the time that SB 1305 was enacted, the exact flow of information between generators,

scheduling coordinators, and system operators was not clearly delineated. Nonetheless, the bill evinces a clear intent that any claim that an electricity product has a generation source different from that of net system power (as defined annually by the Commission) be supported by disclosure of these sources as specific purchases. (Public Utilities Code section 398.4(a)) The legislation is also clearly designed to provide a check on claims of specific purchases by giving the Commission access to generation information and requiring the Commission to compare that data with specific purchase claims made to consumers and sales and purchase information provided to the Commission. The Commission is also directed to prepare an annual net system power report, which will contain a calculation of the state's electricity mix minus the generation claimed as specific purchases. This report allows consumers to compare a specific electricity product with the state's mix.

Unfortunately, the details of restructuring that have developed during the past few months have created potential information gaps that could make the Commission's tasks more difficult. However, the Commission concludes that a liberal reading of SB 1305 as well as other provisions of the Public Resources Code, including sections 25216 and 25216.5, allow the Commission to take the necessary steps outlined in this section in order to implement the intent of SB 1305. By requiring that data for generation that is claimed as a specific purchase be provided from individually metered facilities and provided to the Commission if it is not provided to a system operator, the Commission is ensuring that the consumer protection provisions anticipated under the terms of SB 1305 will still be available.

Subsection (d)(1) requires individual metering of facilities whether the data is provided to the Commission or a system operator. This is necessary to ensure that generation from individual facilities is not aggregated to the point where the Commission's responsibility

to prepare either its annual net system power report or its annual comparison report is hindered. As pointed out above, aggregation of data from individual facilities claimed as specific purchases could render ineffective the checks anticipated by the terms of SB 1305.

Subsection (d)(2) specifies that the information must be provided to the Commission by March 1, 1998 and every year thereafter. This date was picked because it is the same date retail suppliers must provide purchase and sales data for specific purchases to the Commission. This date will allow the Commission to prepare both its comparison report (due October 15 of each year) and its net system power report (due April 15 of each year) in a timely manner.

In order to allow flexibility, the regulation also states that if the required information is provided to the Commission in another filing, reference to that filing and the section of the filing containing the information is sufficient to meet the requirements of the regulation. The Commission believes that much of the generation data required under this section may also be provided in quarterly filings made under the provisions of Public Resources Code section 25320, and wanted to provide generators with the option of merely referencing that filing in those instances.

Subsection (d)(3) specifies the informational requirements in those instances in which generation data is not provided to a system operator. They are the absolute minimum necessary to prepare the comparison report and the net system power report. They include the generator name, facility name and number and facility location, the electricity generated on an annual basis and the type of fuel consumed.

**§ 1393. Retail Disclosure to Consumers**

Section 1393(a) provides definitions necessary to understand the terms used in those sections of the article that specify the format to be used for retail disclosure. The term “annual disclosure” is provided in order to obviate the need to repeat the citation to the Public Utilities Code section that defines and describes the mandated disclosures. The term “information panel”, borrowed from federal nutrition label guidelines (21 C.F.R. § 101.1 et seq.) is used to describe the space where the “power content label” is placed.

The term “power content label” is provided to obviate the need to repeat all the requirements that define what a power content label is each time such a reference is necessary within the regulation. The term “prospective disclosures” is provided in order to obviate the need to repeat the citation to the Public Utilities Code section that defines and describes the mandated disclosures.

The term “renewable” required a definition because the Commission is requiring its use in lieu of the term “eligible renewable”, which is used in the statute. These regulations use the term “renewable” instead of “eligible renewable” for purposes of the power content label only. This switch in terminology was deemed necessary because consumers must be able to easily understand the information contained in the power content label; the term “eligible renewable” will likely be quite confusing to consumers, particularly if they confuse the term “eligible” to mean that the energy is eligible for customer credits that are available through the Commission’s renewable electricity customer credit program.

Section 1393(b) paraphrase the statutory provisions that require retail suppliers to use the power content label for disclosure of fuel mix information, and further clarifies the fuel type information that must be included in the label depending upon whether or not specific purchases are disclosed. Section 1393(b)(1)(A) is needed to ensure that the

regulations further the intent of the legislation to enable consumers to distinguish between claims of specific fuel mixes and state's generic power mix (referred to in the legislation as net system power). This paragraph ensures that retail suppliers do not segment out more attractive specific purchases for disclosure to consumers and hide other specific purchases as net system power. For example, without this section, a retail suppliers could 10% renewable / 90% coal product as 10% renewable / 90% net system power product. This partial disclosure of specific purchases would mislead consumers, which is counter to the intent of SB 1305. Section 1393(b)(1)(B) restates the statutory requirement that retail suppliers claiming specific purchases must disclose net system power as well. Section 1393(b)(2) also restates the requirements for retail suppliers not claiming specific purchases. The restatement is included so that the related requirements can be found in one place.

Section 1393(c) specifies when and under what circumstances the retail supplier must disclose information, via the power content label, to consumers. Section 1393(c)(1) restates the statutory requirement that the required information be provided in all promotional material distributed to consumers. It is restated here so that all the requirements related to disclosure can be found in one place. Sections 1393(c)(2) and (3) give specific dates by which disclosure must occur to end-use consumers of the offered electricity product. The date for Section (2) was chosen to respond to billing cycle constraints expressed by affected parties in an earlier workshop; the date for Section (3) is a restatement of the statutory date.

Section 1393(d) provides guidance about the disclosure of fuel types required by SB 1305. Section 1393(d)(1)(A), (B), and (C) describes the fuel type names that must be used in the power content label and gives the order for the listing of these fuel types. The

fuel types are as described in the legislation, with changes to the name “eligible renewable” as described in the discussion in this Statement of Reasons for Section 1393(a). The fuel types are ordered as they are to segment “renewable” technologies from other, more conventional technologies (“coal” through “other”) and from “net system power.” The more conventional technologies are ordered alphabetically.

Section 1393(d)(1)(B) further allows retail suppliers claiming specific purchases to break out renewable power by fuel type. Several participants in an earlier workshop on SB 1305 requested this be expressly allowed, and as such an option can only increase the provision of information about electricity generation sources to consumers (which is the goal of SB 1305), the Commission decided to include it in its proposal. Section 1393(d)(1)(C) reflects the fuel types used by the Commission to describe net system power.

Section 1393(d)(2) restates a statutory provision that a retail supplier not making a claim of specific purchases need only include net system power information. The restatement is included so that the related requirements can be found in one place. Section 1393(d)(3) requires annual disclosures (only required when specific purchases have been claimed) to include a comparison of the actual specific purchases to those provided in prospective disclosures. The Commission included this requirement in order to make it easy for consumers to compare the generation sources retail suppliers proposed to provide with those they actually provided. The Commission is allowing rounding to the nearest percent because we believe that is a level of accuracy appropriate for comparison purposes.

Section 1393(e) requires a specific format for the power content label, while at the same time allowing flexibility for the graphic presentation of the fuel type information. A

consistent format for most of the features of the power content label was deemed necessary in order to facilitate consumer understanding of the label and to enhance consumers' ability to compare one electricity product to another. Research performed this year by the National Council on Competition and the Electric Industry has shown that consumers better understand the differences between electricity products and are more able to make a decision when information about electricity products is presented in a consistent format. This goal furthers the intent of SB 1305.

The specific details of the power content label given in subsections 1393(e)(1-5) are similar to those used for federal nutrition label guidelines (21 C.F.R. § 101.1 et seq.), for which the Food and Drug Administration conducted much market research in selecting optimal design for consumer understanding. The Commission decided to use the same formats because consumers are familiar with nutrition labels and seem to find them easy to read and to understand. Using the font sizes and specifications of the nutrition labels is an easy way to ensure that the text will be legible to the majority of consumers. Additional reasons for specific provisions are provided as follows:

Section 1393(e)(1) is necessary to ensure that the label is easy to read. Without the guidelines specified in this section, retail suppliers could include so much additional information, consumers might have difficulty reading the label and comparing one product label with another.

Section 1393(e)(2) requires the label appears to be a on the front page or clearly indicated on the front page. This is necessary to ensure that the label is easy to find, facilitating consumer awareness of the information and ease of comparison of a variety of electricity products. A minimum font size of the note is provided for the same reason.

Section 1393(e)(3) requires a box to be drawn around the label in order to clearly

distinguish the label from the surrounding text or graphics. Again, this provision facilitates consumer identification of the label.

Section 1393(e)(4) specifies font sizes and colors, case, leading, and kerning to ensure that the text will be legible to readers. The specifications in this section mimic those used for nutrition labels.

Section 1393(e)(5) provides several options for highlighting of headings. Highlighting is required in order to ensure that the headings are clearly distinguished from other text appearing on the label. This facilitates consumer understanding of the label because the headings identify what types of information are being presented.

Section 1393(e)(6) and (7) specifies how information must be presented on the label. These specifications were chosen in part on informal research conducted by Commission staff with electricity industry stakeholders and non-industry laypersons, and in part on conversations with members of the organization The Regulatory Assistance Project. The Regulatory Assistance Project (RAP) is the organization that is responsible for conducting consumer focus groups on electricity information disclosure for the National Council on Competition and the Electric Industry. RAP conducted nationwide tests on a variety of label designs, including three submitted by the California Energy Commission, to determine design parameters that would facilitate consumer understanding of the information being displayed. While results of these tests are not complete at this time, they did provide sufficient information to reject certain options.

The Commission plans to conduct additional testing of the label to ensure that these terms and definitions are in fact understood by the majority of consumers; the Commission understands it may need to modify these guidelines if the testing indicates

that better options are available. Nonetheless, the options selected represents the Commission's best judgment at this time about how to present the required information to consumers in a manner that is easy to understand. The Commission also plans to conduct consumer education activities to facilitate consumer understanding of potentially unfamiliar terms.

Consistent with SB 1305, section 1393(e)(6) requires the power content label to display both specific purchases and net system power, allowing the consumer to understand how the electricity product being offered differs from net system power. When no specific purchases are being claimed, only net system power need be disclosed. Footnotes and subheadings are necessary to explain to the consumer the meaning of the terms "Your Specific Purchases," "Net System Power," and "Renewable." These footnotes and subheadings, were changed in response to comments presented during earlier workshops on SB 1305 implementation, and are designed to facilitate consumer understanding of the label.

Sections 1393(e)(6)(A)(B)(C)and (D) require the use of headings with specified font sizes. These specifications are necessary to clearly delineate the categories of information being presented to consumers, which in turn facilitates understanding of the label. sections 1393(e)(6)(B)(i) and (C)(i) specify that the fuel mix information must be presented in a "table or other graphic format." This language was selected by the Energy Commission in an effort to balance two competing considerations. The Commission believes that requiring greater consistency in the format will result in greater consumer ability to compare information for competing offerings. However, at the same time, the Commission wishes to offer retail suppliers some level of flexibility in displaying information, and some level of deference in selecting the their own presentation. The Commission decided that the appropriate balance of these two objectives was to require a

graphic format, to ensure that the retail supplier does not write out the required information in prose, but to allow the retail supplier to pick the graphic used.

Sections 1393(e)(6)(B)(ii) and (C)(ii) provide guidance for the listing of fuel types for the product being soled (if no claims of specific purchases are mad) and of net system power. This requirement is added so that there is consistency in the presentation. The Commission believes that this consistency is necessary to facilitate consumer familiarity with the label, ease of use and comparison.

Section 1393(e)(6)(D) provides for an option of one or two footnotes, which contain information about the definition of net system power and renewable power. The information in these footnotes must be provided to consumers so that they can easily understand the terms used in the power content label. The first footnote is mandated by SB 1305 as a footnote. The second footnote is optional, and the retail supplier may choose to include the information in the text instead.

Finally, the Commission has decided to include in an Appendix to these regulations, an example of a power content label that meets the requirements for prospective disclosures made a by a retail supplier who makes a claim of specific purchases. It is referenced in Section 1393(e)(6)(E).

Section 1393(e)(7) contains the requirements for prospective disclosures by retail suppliers who do not make a claim of specific purchases. The requirements for the net system power disclosures are the same as in the disclosure for which a specific purchase claim is made. The Commission has decided to include in an Appendix to these regulations, an example of a power content label that meets the requirements for prospective disclosures made a by a retail supplier who does not make a claim of specific

purchases. It is referenced in Section 1393(e)(7)(B).

Section 1393(e)(8) specifies the format for annual disclosures. It contains requirements for headings and footnotes similar to those required for prospective disclosures which were selected for the same reasons. It requires the annual disclosure of specific purchases to contain information about actual specific purchases from the previous calendar year, and information about discrepancies between prospective specific purchases and actual specific purchases for the previous calendar year. The first requirement is taken directly from the statute and is provided here so that all the information necessary for the label can be found in one place.

Section 1393(e)(8)(C) also includes a requirement that the retail supplier present a comparison of the prospective disclosures made during the previous year to the actual disclosure. By requiring the provision of this information, consumers are able to determine for themselves the accuracy of the retail supplier's disclosures. The Commission believes this is valuable information in a deregulated market, and that allowing consumers to determine for themselves whether any discrepancies should affect their purchasing decisions is completely consistent with the goals of electric industry restructuring -- allowing consumers greater freedom to pick from a variety of retail service providers and ensuring consumer access to information to help make those decisions. Because there are a variety of reasons why discrepancies might occur, the Commission is also requiring retail suppliers to explain any discrepancy greater than ten percentage points.

Finally, the Commission has decided to include in an Appendix to these regulations, an example of a power content label that meets the requirements for annual disclosures. It is referenced in Section 1393(e)(8)(E).

**§ 1394. Annual Disclosure to the Energy Commission**

This section provides requirements necessary for the Commission to complete the comparison report mandated under Public Utilities Code section 398.5(e). Section 1394(a) restates the statutory deadline for providing purchase and sales information to the Commission. It is included here so that all the related reporting requirements can be found in one place.

Section 1394(b) requires electronic reporting (defined earlier in the regulations) to the Commission of the information specified in Section 398.5(a). The Commission selected the electronic reporting in order to simplify both the filing by retail suppliers and access to the information by Commission staff. As stated in the discussion under the definition, use of database or spreadsheet format that can be read in either Excel 5.0 or Access 2.0 should be the least burdensome for retail suppliers, as Excel and Access are among the most widely used software programs for spreadsheet and data storage applications. Mail and e-mail to the Docket Office were selected in order to ensure that the materials are received in an office that has established procedures to record the arrival of and to distribute incoming filings.

The specification in the regulation of the information to be filed is taken directly from the statute; the restatement is provided here so that all of the reporting requirements can be found in one place. The Commission also added a requirement that the information about kilowatt hours sold include fuel type; this is clearly necessary in order to be able to track the generation claimed as a specific purchases from the source to the end-use consumer. The statute requires fuel type to be included in information provided about the generation purchases by a retail supplier; without the fuel type information for sales made by that supplier, the Commission will not be able to conduct the tracing necessary to provide the

comparison of claimed specific purchases to historical generation data, as required by the statute.

Section 1394(c) requires reporting in a tabular spreadsheet or database format allowing identification by filed or cell in order to ensure that the Commission staff can easily utilize the data for the required comparison. Product, generating facility and fuel type are specified because those are the critical elements of the required comparison.

Section 1394(d) provides that the Commission may audit specific purchase transactions to determine whether they meet the statutory criteria. In order to complete an accurate comparison report, the Commission must be able to determine that, in fact, the electricity claimed as a specific purchase is traceable to a specific generation source and has been sold once and only once. The proposal specifies several different kinds of commercial documents and mechanisms, including tags, credits, contract provisions, invoices, and attestations, that the Commission can rely on in making this determination. The development of commercial mechanisms that will be used in deregulated market is still underway, but the Commission believes that the specified mechanisms will be both available to market participants and sufficient for the Commission to meet its responsibilities. However, the Commission acknowledges that this section of the regulations may need to be refined as the competitive market emerges.