

NOTICE OF PROPOSED ACTION

**FOR ADOPTION OF REGULATIONS GOVERNING
ELECTRICITY GENERATION SOURCE DISCLOSURE**

California Energy Commission
Docket No. 97-SB-1305

NOTICE OF PROPOSED ACTION

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The California Energy Commission ("Commission") proposes to adopt regulations under the authority of section 25213 of the Public Resources Code. These regulations are found at Title 20, California Code of Regulations, section 1390 et seq., and implement, interpret, and make specific sections 398.1 - 398.5 of the Public Utilities Code, which were enacted earlier this year in SB 1305 (Stats. 1997, ch. 796, § 1), and sections 25216 and 25216.5 of the Public Resources Code. The regulations specify guidelines for the format and means of disclosure, and the submittal of information required by Sections 398.3, 398.4, and 398.5 of the Public Utilities Code. The date set for adoption of the proposed changes to these regulations is as follows:

Commission Business Meeting
February 18, 1998
Beginning at 10 a.m.
California Energy Commission
Hearing Room A
1516 Ninth Street
Sacramento, California

Participants should be aware that any of the proposed regulations could be substantively changed as a result of public comment, staff recommendation, or recommendations from Commissioners. Moreover, changes to the proposed regulations not indicated in the express terms could be added if they improve the clarity or effectiveness of the regulations. If the Commission considers changes to the proposed regulations, pursuant to Government Code section 11346.8 a full copy of the text will be available for at least 15 days prior to the date on which the agency adopts the resulting regulation.

Interested persons may present oral and written statements about the proposed regulations at the adoption hearing, and may provide written comments to the Commission on or before February 18, 1998, by submitting them to:

Docket Office
California Energy Commission
Docket No. 97-SB-1305
1516 9th Street, MS-4
Sacramento, CA 95814

The Commission has prepared an initial statement of reasons for the proposed regulations. To obtain a copy of the initial statement of reasons or the express terms, please contact Lynn Tien-Tran at (916) 654-3951 or by e-mail at mtran@energy.state.ca.us. Additionally, the Commission has available all the information upon which the proposed regulations are based; to obtain copies, please contact the Docket Office at the above address, or call (916) 654-5076. The Commission's Public Advisor is available to assist any person who wishes to participate in this proceeding. For assistance from the Public Advisor, please call Roberta Mendonca at (916) 654-4489 or toll-free in California at (800) 822-6228, or by e-mail at rmendonc@energy.state.ca.us. For information involving the rulemaking process, contact Caryn Hough at (916) 654-4178 or by e-mail at chough@energy.state.ca.us.

INFORMATIVE DIGEST

Role of the Energy Commission

The Commission was created by the Warren-Alquist State Energy Resources Conservation and Development Act (Public Resources Code section 25000 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 pertaining to electricity generation.

SB 1305, which was enacted earlier this year (Stats. 1997, ch. 796, § 1), 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.

Under SB 1305, the Commission must specify the format for various disclosure and reporting requirements adopted by the Legislature to ensure consumer access to information about post-deregulation electricity options. The Commission is directed to specify 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.

Order Instituting Rulemaking

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 of generation data specified in section 398.3 of the Public Utilities Code, the submittal of electricity source information specified in section 398.4 of the Public Utilities Code, and the submittal of electricity purchase information specified in section 398.5 of the Public Utilities Code. As stated above, SB 1305 requires the Commission to specify these guidelines by January 1, 1998. This submission to the Office of Administrative Law complies with that requirement, although the Commission recognizes that the regulations do not become enforceable until they are filed by the Office of Administrative Law with the Office of the Secretary of State. The Commission anticipates that additional changes to the disclosure and reporting regulations may be appropriate after deregulation is initiated and the flow of data between generators, transmission system operators, retail suppliers, consumers, and regulators is better understood.

Existing Laws and Regulations

There is no existing state law comparable to the provisions of SB 1305. The Commission is subject to other statutory requirements that mandate data collection, analysis, and disclosure, but those provisions direct the Commission to, among other things, assess broad electricity generation and consumption trends, analyze the consequences of those trends, and to forecast electricity demand and supply. Unlike the provisions of SB 1305, these other mandates are not directed at ensuring that individual customers receive information about the specific sources that generate the electricity they consume.

Similarly, the California Public Utilities Commission (CPUC), which regulates California's privately-owned utilities, does not require these utilities to provide information to customers about the sources of the electricity they consume, other than the price, which is established in tariffs approved by the CPUC. Nor are municipal or other publicly-owned utilities required to specify to customers the generation sources of the electricity they consume.

Effect of the Proposed Action

The proposed action will establish the specific format of the disclosure and reporting requirements mandated under SB 1305, by adding regulations to Title 20, beginning at section 1390. The proposed action can be divided into three parts. The first part contains the requirements governing disclosure of 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 disclosure of electricity purchase information by retail suppliers to

the Commission. In addition, the proposed regulations contain sections that establish the scope of the proposed requirements and provide applicable definitions.

Comparable Federal Law

There is no comparable Federal law, as states have the sole authority to regulate the terms and conditions of retail electricity services.

Plain English Policy Statement Overview

The broad objectives of the proposed regulations are to specify the guidelines for the format and means of disclosure of generation data specified in section 398.3 of the Public Utilities Code, the submittal of electricity source information specified in section 398.4 of the Public Utilities Code, and the submittal of electricity purchase information specified in section 398.5 of the Public Utilities Code. As stated above, SB 1305 requires the Commission to specify these guidelines by January 1, 1998.

SB 1305 establishes a program in which retail suppliers provide information to consumers about the generation sources of the electricity they consume. This information is compared by the Commission to actual generation data and information about the electricity purchased by the retail suppliers. There are three sets of reporting requirements that are the subject of this rulemaking. The first is the generation disclosure, in which the generating data from generating units is reported to System Operators and made available to the Commission. These requirements are fairly 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 of generation sources, by fuel type, of the electricity they will provide during the current calendar year. This prospective disclosure 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 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").¹ 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. The Commission does not believe that preparation of these annual reports requires regulations.

The express terms of the proposed action are available from the agency contact person named in this notice. The Commission drafted these terms in Plain English pursuant to Government Code section 11342(e) and 11346.2(a)(1). Small businesses may be affected by these regulations in that they may be required to comply with some of the disclosure and reporting requirements mandated by SB 1305. However, it is the terms of SB 1305 that impose these requirements; the regulations merely specify the format to be used in meeting these requirements.

LOCAL MANDATE DETERMINATION

Pursuant to Government Code section 11346.5(a)(5), the Commission is required to determine whether the proposed regulations, if adopted, will impose a mandate on local agencies or school districts, and if so, whether the mandate requires state reimbursement. The Legislature, in adopting SB 1305, found that it does impose a state-mandated local program, but that no reimbursement is required because the only costs that may be incurred by a local agency will be incurred because this act creates a new crime within the meaning of Section 17556 of the Government Code.

The Commission relies on the Legislature's conclusions in making this local mandate determination. Moreover, the regulations proposed by the Commission in this rulemaking merely specify the format of the reporting requirements mandated by SB 1305; they do not add new requirements or impose new obligations. The Commission believes that if the Legislature's determination were challenged, and a mandate was found to exist, it would arise from the imposition of the disclosure and reporting requirements contained in the statute, not from the format specified by the Commission.

In addition, we note that although the statute requires the state's 55 public electric utilities (included in the definition of local agencies under the Government Code) to provide information to retail customers, this can be accomplished within their regular billing activities at little or no extra cost. In fact, the Commission drafted the proposed language expressly to accommodate billing cycles of retail service providers. And, with respect to allowing Commission access to generating data from generating units they own (approximately 28 public electric utilities in California own generation)

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

or provide transmission service for, most of the data that will be reported is currently being created or collected by municipal utilities under Public Resources Code section 25320 or to ensure effective management of their transmission systems. Moreover, the generation disclosure requirements are very generally worded to allow maximum flexibility in using existing data and data systems to provide the necessary data to system operators. Finally, to the extent that any entity, whether a municipal utility or not, wishes to take advantage of the provisions of SB 1305 to market specific generation sources to their customers, the compliance with the provisions of the bill should allow them the opportunity to increase their profits by targeting niche markets. Thus, the implementation of SB 1305 may provide public electric utilities the opportunity for increased earnings.

COST/SAVINGS ESTIMATE

Pursuant to Government Code section 11346.5(a)(6), the Commission must determine whether the proposed regulations, if adopted will impose any costs or savings to any state agency, or costs to any local agencies or school districts that are required to be reimbursed under Government Code section 17500 et seq., and whether there are other non-discretionary cost or savings imposed on local agencies or cost or savings in federal funding to the state. A completed Fiscal Impact Statement form adopted by the Department of Finance is included in this submittal.

With respect to local agencies, the Legislature, in adopting SB 1305, found that the bill does impose a state-mandated local program, but that no reimbursement is required because the only costs that may be incurred by a local agency will be incurred because the act creates a new crime within the meaning of Section 17556 of the Government Code. The Commission relies on the Legislature's conclusions in making this local mandate determination. Moreover, the regulations proposed by the Commission in this rulemaking merely specify the format of the reporting requirements mandated by SB 1305; they do not add new requirements or impose new obligations. Any costs imposed under SB 1305 will be created by the disclosure and reporting requirements of the bill, not by the Commission's regulations specifying the format to be used in meeting the requirements.

In addition, we noted above that although the statute imposes disclosure and reporting requirements on generators and retail suppliers, much of the data that will be reported is currently being created and collected. The Commission has also drafted language that allows maximum flexibility in using existing data and data systems, and billing activities to provide the necessary data to system operators and retail customers. Finally, to the extent that any entity wishes to take advantage of the provisions of SB 1305 to market specific generation sources to their customers, the compliance with the provisions of the bill should allow them the opportunity to increase their

profits by targeting niche markets. Thus, the implementation of SB 1305 may provide public electric utilities the opportunity for increased earnings.

No costs or savings to any state agency are anticipated to result from these regulations. The only state agency affected by the regulations is the Commission itself, which will be entitled to access generating information supplied to transmission system operators. Providing a regulation that specifies how this access will occur does not create a costs or savings to the Commission.

Because this NOPA must be filed before the Commission holds its adoption hearing, this preliminary determination is based solely on the nature of the proposed changes. The Committee held a preliminary hearing on the rulemaking on December 4 and 5, but received no comments on costs or savings. The Committee anticipates that there may be discussion of costs and savings associated with compliance with the format of the disclosure and reporting requirements during the 45-day public comment period. Any such comments will be considered by the Commission in the adoption hearing and will be responded to in the Final Statement of Reasons.

SIGNIFICANT ADVERSE ECONOMIC BUSINESS IMPACT INFORMATION

Government Code section 11346.5(a)(8) requires the Commission, in adopting or amending its regulations, to determine whether the action will have a significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states, and, if the Commission determines that it shall not, to make a declaration to that effect in this Notice of Proposed Action. The Commission has not yet completed the rulemaking process, but at this time, no significant adverse economic impact on business including the ability of California businesses to compete with businesses in other states is anticipated from the proposed regulations.

One of the results of deregulation is that more businesses will be allowed to compete for the provision of electricity services to California consumers. The Commission expects to see businesses created to take advantage of the new markets and expansion of existing businesses. Moreover, the program established by SB 1305 will provide opportunities for new and existing businesses to target niche markets by specifying generation sources of the electricity they propose to sell. We believe that any costs associated with the disclosure and reporting requirements established by SB 1305 are the result of the program itself, and not of these regulations, which merely specify the format of the mandated disclosure and reporting.

The Commission notes that many existing generators are already required to file generation information under Public Resources Code section 25320 as well as other sections of law. The regulations were drafted to ensure flexibility in reporting requirements, and the Commission

believes that most generators will not incur significant new costs. Moreover, implementation of SB 1305 will allow generators access to increased marketing opportunities.

Because this NOPA must be filed before the Commission holds its adoption hearing, this preliminary determination is based solely on the nature of the proposed changes. The Committee held a preliminary hearing on the rulemaking on December 4 and 5. The only comments received at that hearing on business impacts were that no retail suppliers were eager to see the program implemented. The Committee anticipates that there may be discussion of the business impacts associated with compliance with the format of the disclosure and reporting requirements during the 45-day public comment period. Any such comments will be considered by the Commission in the adoption hearing and will be responded to in the Final Statement of Reasons.

COST IMPACT ON PRIVATE PERSONS OR DIRECTLY AFFECTED BUSINESSES

Pursuant to Government Code section 11346.5(a)(9), the Commission has prepared this statement of the potential cost impact of the proposed regulations. The Commission has determined that if adopted, the regulations will not have a potential cost impact on private persons. The Commission's determination on the potential cost impact of the amendments on directly affected businesses is identical to the one provided in the previous section on significant adverse economic business impact information.

RESULTS OF ASSESSMENT REQUIRED BY SECTION 11346.3(b)

Government Code section 11346.5(a)(10) requires the Commission to include a statement of the assessment required by Government Code section 11346.3(b), which in turn requires all state agencies to assess whether and to what extent their proposed regulations affect the creation or elimination of jobs in California, the creation or new businesses or the elimination of existing businesses within the state, and the expansion of businesses currently doing business within the state. It is likely that the proposed regulations will have no effect on the creation or elimination of jobs and new businesses within the state, and no effect on the expansion of businesses currently doing business within the state.

One of the results of deregulation is that more businesses will be allowed to compete for the provision of electricity services to California consumers. The Commission expects to see businesses created to take advantage of the new markets and expansion of existing businesses. Moreover, the program established by SB 1305 will provide opportunities for new and existing businesses to target niche markets by specifying generation sources of the electricity they propose to sell. However, it is the program established by SB 1305 that creates these new business opportunities as well as the concomitant disclosure and reporting costs. These regulations, which

merely specify the format of the mandated disclosure and reporting, have no effect on the creation, elimination, or expansion of jobs.

HOUSING EFFECTS STATEMENT

Pursuant to Government Code section 11346.5(a)(11), the Commission has determined, based on the nature of the proposed regulations, that they will not have a significant effect on housing costs.

CONSIDERATION OF ALTERNATIVE PROPOSALS

Pursuant to Government Code section 11346.5(a)(12), the Commission must, before adopting the proposed regulations, determine that no alternative considered by it would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AGENCY CONTACT

Inquiries concerning the proposed adoption should be directed to Caryn Hough, by calling (916) 654-4178, or by e-mail at chough@energy.ca.state.us.

STATUTORY AUTHORITY AND REFERENCE

Authority: Public Resources Code Section 25213; Public Utilities Code Sections 398.4, 398.5

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

CALIFORNIA ENERGY COMMISSION

Date: _____

MICHAL MOORE
Commissioner and Presiding Member
Ad Hoc Information Committee