

Article 5. Electricity Generation Source Disclosure

§ 1390. Scope

The regulations in this Article specify the disclosure and reporting requirements established in Article 14 (commencing with section 398.1) 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 “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 and that contains either:

(1) a reference to the type of fuel used to generate the electricity available for purchase from a 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, in part or in whole, of the electricity available for purchase from a retail supplier, other than that in the net system power mix.

(b) “Electricity offering” means any electricity product that is made available for sale to and/or sold to end-use consumers in California.

(c) “Eligible renewable” means a renewable resource technology defined as electricity produced from other than a conventional power source within the meaning of 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:

(1) Biomass and waste

(2) Geothermal

(3) Small hydroelectric

(4) Solar

(5) Wind

(d) “Energy Commission” means the California Energy Resources Conservation and Development Commission.

(e) “Facility” means one unit or all 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 electric output is capable of being separately identified and metered and that:

(1) is located within the Western Systems Coordinating Council interconnected grid, and

(2) is capable of producing and delivering net energy (energy in excess of a generation station’s internal power requirements).

(g) “Generator” means the owner and initial seller of 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.

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

(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: a municipality or municipal corporation operating as a public utility district furnishing electric services, an irrigation district furnishing electric services, or a joint powers authority that includes one or more of these agencies and that owns generation or transmission facilities, or furnishes electric services over its own or its members' electric distribution system.

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

(l) “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 and that are distributed directly to end-use consumers. It does not include materials distributed 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.

(m) “Report electronically” means to provide files in either a database or spreadsheet format that can be read in either Excel 5.0 or 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”.

(n) “Retail supplier” means every entity that makes an electricity offering to end-use consumers in California.

(o) “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.

(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 electricity transactions which are traceable to specific generation sources by any auditable contract trail or equivalent, such as a tradable commodity system, that provides commercial verification that the electricity source claimed has generated and 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, or a local publicly owned electric utility that does not utilize the Independent System Operator.

(s) 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 Submission

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

(2) Generators shall report information specified in subsection (b) within forty-five days of the end of each calendar quarter beginning with the quarter ending September 30, 1998.

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

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

(2) Fuel Information

(A) For facilities using only one type of fuel, generators shall report electronically the type of fuel consumed by month on a quarterly basis, and may report the amount of fuel consumed.

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

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

1. Eligible Renewable, which shall be reported as one of 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

(c) System Operator Responsibilities

(1) Energy Commission Access

(A) Subject to the limitations described in subsection (b)(1)(B) of this section, the System Operator shall provide the Energy Commission access to generation and fuel use data provided to the System Operator by generators and Scheduling Coordinators, either by providing a computer disk containing the information, or by providing electronic access to the information. This information shall be provided to the Energy Commission within 60 days of the end of each calendar quarter.

(B) Limitations on Energy Commission Access

1. The System Operator is not required to provide the Energy Commission with any information submitted under subsection (b)(2) of this section that specifies the amount of fuel consumed at a facility.

2. The System Operator is not required to provide the Energy Commission with any information submitted under subsection (b)(2) 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.

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

(2) If the generation or fuel information is not reported to the System Operator either directly or through a Scheduling Coordinator, the information specified in subsection (d)(2)(A) - (C) of this section must be provided directly to the Energy Commission by March 1, 1999 and every year thereafter, unless 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.

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

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

(C) Type of fuel consumed as a percentage of electricity generation for the previous calendar year, using the categories specified in subsection (b)(2)(C) of this section.

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.

§ 1393. Retail Disclosure to Consumers

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

(1) “Annual disclosure” means the disclosure required under Public Utilities Code Section 398.4(l).

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

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

(4) “Prospective disclosures” means the disclosures required under Public Utilities Code section 398.(4)(b) and (c).

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

(b) Pursuant to Public Utilities Code Section 398.4, all retail suppliers that make an offering to sell electricity that is consumed in California shall disclose the fuel type of the electricity generation source for each electricity product offered.

(1) A retail supplier that makes any claim of specific purchases shall:

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

(B) Disclose net system power in its power content label; and

(C) Disclose actual specific purchases for the previous calendar year.

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

(c) Retail suppliers shall disclose the information to consumers according to the following schedule:

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

(2) Information provided to consumers pursuant to Public Utilities Code section 398.4(c) shall be provided to consumers 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.

(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, on or before April 15, 1999 and annually thereafter, as prescribed in this section.

(d) Retail suppliers shall include the following information in their power content labels:

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

(A) The 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, using the fuel type names specified and in the following order, rounded to the nearest percent:

1. Renewable

2. Coal

3. Large hydroelectric

4. Natural gas

5. Nuclear

6. Other

7. Net System Power

(B) The retail supplier may additionally list the following subcategories within the Renewable category:

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

(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.

(3) If a retail supplier does make 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 (e). 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.

(e) Retail suppliers shall use the following format for their power content labels:

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

(2) If the retail supplier offers materials that consist of more than one page, the information panel, 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, the note shall appear in a font no smaller than 10 point.

(3) The power content label contained in the information panel shall be set off in a box by use of hairlines and 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 san 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;

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

(F) 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.

(6) If specific purchases are being disclosed, the power content label appearing on product-specific written promotional materials and in quarterly reports to customers 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 set in a type size larger than all other print 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 (# 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.

(8) If a retail supplier does make 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. 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 set in a type size larger than all other print size in the power content label.

(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].”

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.

(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.”

(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 disclosures is included on page 3 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 to the Energy Commission

(a) Any retail supplier that identifies specific purchases under the provisions of Public Utilities Code section 398.4 must report the information contained in this section to the Energy Commission on March 1, 1999 and annually thereafter.

(b) For each separate electricity offering in California, retail suppliers shall report electronically the following information:

(1) Kilowatt hours purchased, by generating facility and fuel type, during the previous calendar year;

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

(3) 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.

(c) Retail suppliers shall provide the information specified in 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.

(d) The Commission may audit, at random, electricity transactions claimed as specific purchases to determine whether the transactions are traceable to specific generation sources 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, the Commission may rely on commercial documents, such as contracts, invoices, tags, or credits, 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.

APPENDIX A

POWER CONTENT LABEL

Your Electricity Purchases

Power that XYZ Company has contracted to provide

Renewable**	XX%
Coal	XX%
Large Hydroelectric	XX%
Natural Gas	XX%
Nuclear	XX%
Other	XX%
Net System Power (see table)	XX%
TOTAL	100
	%

Net System Power Mix*

Renewable**	XX%
Biomass and Waste	XX%
Geothermal	XX%
Solar	XX%
Small Hydroelectric	XX%
Wind	XX%
Coal	XX%
Large Hydroelectric	XX%
Natural Gas	XX%
Nuclear	XX%
Other	XX%
TOTAL	100
	%

* The State of California determines this net system power mix annually; your actual purchases may vary. XYZ Company does not make any additional claims about this power.

** Renewables power, according to California law, includes power from biomass and waste, geothermal, small hydroelectric (< 30 MW), solar, and wind technologies.

POWER CONTENT LABEL

Net System Power Mix*		
Renewable**		XX%
Biomass and Waste	XX%	
Geothermal	XX%	
Solar	XX%	
Small Hydroelectric	XX%	
Wind	XX%	
Coal		XX%
Large Hydroelectric		XX%
Natural Gas		XX%
Nuclear		XX%
Other		XX%
TOTAL		100
		%

* The State of California determines this net system power mix annually; your actual purchases may vary. XYZ Company does not make any additional claims about this power.

** Renewables power, according to California law, includes power from biomass and waste, geothermal, small hydroelectric (< 30 MW), solar, and wind technologies.

POWER CONTENT LABEL

Annual Report: Your Electricity Purchases

Power that XYZ Company provided for calendar year 1997

Renewable		XX%
Biomass and Waste	XX%	
Geothermal	XX%	
Solar	XX%	
Small Hydroelectric	XX%	
Wind	XX%	
Coal		XX%
Large Hydroelectric		XX%
Natural Gas		XX%
Nuclear		XX%
Other		XX%
Net System Power (see table)		XX%
TOTAL		100
		%

The fuel mix that [company name] projected for 1997 was within ten percentage points of the actual fuel mix provided.