

ATTACHMENT A

MODIFICATIONS (15-DAY LANGUAGE)

November 8, 2000

This attachment shows the modifications (15-day language) added to the text originally published in the Regulatory Notice Register on September 22, 2000. Therefore, it contains unmarked text (existing regulatory language), text marked in underline (changes proposed pursuant to the September 22, 2000 notice), text marked in double underline (changes being proposed pursuant to this notice), and text marked in strike-out (deletions to existing regulatory language proposed pursuant to the September 22, 2000 notice). There are no deletions being proposed pursuant to this notice. The only sections to which changes are proposed are section 1394 and Appendix C.

/1394. Annual Submission to the Energy Commission

~~(a) Retail Supplier Report~~

~~(1) Each retail supplier that makes a claim of specific purchases shall, on March 1 of every year beginning in 1999, provide an attestation, signed by the retail supplier under penalty of perjury, that the kilowatt hours claimed by the retail supplier as specific purchases during the previous calendar year were sold once and only once to retail consumers. The retail supplier shall also on the same date report the information contained in subsection (a)(2) of this section to the Energy Commission.~~

~~(2) For each electricity product offered for sale in California for which a retail supplier makes a claim of specific purchases, the retail supplier shall report electronically the following information:~~

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

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

~~1. Generator name and address;~~

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

~~(C) Kilowatt hours sold at retail during the previous calendar year.~~

~~(D) A sample of each general disclosure provided to consumers pursuant to section 1393 of these regulations during the previous calendar year.~~

~~(3) Retail suppliers shall provide to the Energy Commission the information specified in subsections (a)(2)(B) and (C) of this section in a tabular spreadsheet or database format that allows identification of separate fields or cells for the information by product, generating facility, and fuel type. Retail suppliers may provide the information specified in subsection (a)(2)(B) of this section by providing a reference to the date and title of a filing made to the Energy Commission containing the information specified in that subsection.~~

~~(b) Audit~~

~~(1) Any audit required under this section shall meet the following requirements:~~

~~(A) The audit shall be performed by a certified public accountant who is a member of the American Institute of Certified Public Accountants who shall sign any attestation required under subsection (b) of this section;~~

~~(B) The audit shall be performed with an error band of plus or minus five percent, using auditing standards described in the Statement on Auditing Standards, published by the American Institute of Certified Public Accountants, including statistical sampling techniques if and when appropriate.~~

~~(2) Each retail supplier who makes a claim of specific purchases shall provide an attestation to the Energy Commission that an audit of the information specified in subsections (b)(2)(A)–(D) of this section, demonstrates that the information provided to the Energy Commission pursuant to subsection (a)(2)(B) and (C) of this section and the annual disclosure required by subsection (e)(7) of section 1393 of these regulations contains no material misrepresentations of fact. The attestation shall be provided to the Energy Commission on or before June 1 of each year, except that in 1999, the attestation shall be provided no later than July 31.~~

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

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

~~(C) Contracts necessary to trace the sale of electrical energy generated by the generating facilities identified in subsection (a)(2)(B) of this section from the generator to the retail supplier.~~

~~(D) The kilowatt hours of electricity purchased by customers from the retail supplier.~~

~~(3) If, in providing the retail supplier report required under subsection (a) of this section, the retail supplier refers to a filing by another party that specifies the total MWhs of a pool of renewable power by fuel type and the amount of electrical energy delivered from that pool to the retail supplier, the referenced filing shall contain an attestation that an audit demonstrates that the information provided in the referenced filing contains no material misrepresentations of fact.~~

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

(a) Retail Provider Report.

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

(A) Retail providers must provide this information on spreadsheet forms provided by the Energy Commission, and each page must include the Retail Energy Supplier Registration Identification Number provided by the California Public Utilities Commission or, if one is not provided, a unique identification number assigned by the Energy Commission.

(B) The retail provider must provide one paper copy, with an original signature, and, if feasible, must also provide the information electronically.

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

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

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

(2) Informational Requirements.

(A) Purchases

1. For each source of generating facility output being claimed as a specific purchase, the retail provider must include the following information: facility name or pool name, fuel type, facility or pool number (a facility number will be provided by the U.S. Energy Information Agency (EIA), or, if one is not provided, by the Energy Commission, and pool number will be provided by the Energy Commission), certificate number of any certificates issued pursuant to Appendix B of these regulations (if any), gross kilowatt hours purchased, kilowatt hours resold or consumed on-site, and the resultant calculation of net specific purchases. The retail provider shall also identify kilowatt hours of generic purchases, kilowatt hours of generic purchases resold or consumed on-site, and the resultant calculation of net generic purchases. This information shall be provided on the current version of Schedule 1 prepared by the Energy Commission.

2. Retail providers who are claiming specific purchases obtained from a pool must reference a filing made no later than March 1 of the current calendar year to the Energy Commission by the pool that includes the following information:

a. For each generator that provided generating facility output into the pool, the facility name, fuel type, facility number provided by U.S. Energy Information Agency (EIA) or, if one is not provided a unique identification number assigned by the Energy Commission, certificate number of any certificates issued pursuant to Appendix B of these regulations (if any), and total number of kilowatt hours provided into the pool. This information shall be provided on the current version of Schedule 3 prepared by the Energy Commission.

b. For each purchase of generating facility output from the pool, the amount of kilowatt hours purchased by each purchaser by fuel type. If the purchaser is also a retail provider, include the Retail Energy Supplier Registration Identification number provided by the California Public Utilities Commission or, if one is not provided, a unique identification number assigned by the Energy Commission. This information shall be provided on the current version of Schedule 4 prepared by the Energy Commission.

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

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

(D) Power Content Label: The retail provider shall provide to the Energy Commission a copy of each promotional disclosure provided to customers pursuant to subsection (c)(1) of subsection 1393 that varies from any quarterly disclosure provided in that calendar year. In addition, the retail provider shall also provide a copy of any quarterly label provided to customers pursuant to subsection (c)(2) of section 1393 that was not provided to the Energy Commission at the time it was provided to customers.

(b) Agreed-upon Procedures

(1) By June 1 of each year, any retail provider who made a claim of specific purchases during the previous calendar year shall provide a report prepared by an auditor who has conducted the procedures identified in Appendix C of these regulations. The report shall contain a summary of the results of the procedures and a proof of service of the annual power content label and the quarterly labels for the previous calendar year upon all customers.

(2) A retail provider that is a public agency providing electric services is not required to comply with the provisions of subdivision (b)(1) if that public agency offers only one electricity product to its customers and if the board of directors of the public agency approves at a public meeting the submission to the Energy Commission of an attestation of the veracity of the annual report.

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

(a) This Appendix describes the agreed-upon procedures that retail providers claiming specific purchases shall use to comply with the requirements of subsection (b)(1) of section 1394 of these regulations. These procedures shall be performed for each electricity product for which a claim of specific purchases was made during the previous calendar year, unless the exemption identified in subsection (b)(2) of section 1394 is applicable. The procedures in subsections (c)(1), and (c)(2) of this Appendix are applicable to all transactions relating to the fuel mix of the product, and the procedures in subsection (c)(3) are applicable to the power content labels disclosing the fuel mix of the product. The procedures described in subsection (c)(4) are also applicable to transactions in which the purchase of generating facility output is traced from a specific generating facility to a retail customer through a pool.

(b) The retail provider must engage an independent accountant or certified internal auditor to perform the procedures identified in subsection (3) below in accordance with the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Attestation Engagements, Section 600 or under Statements on Auditing Standards, Section 622. The accountant shall provide a report to the Energy Commission no later than June 1 of each year summarizing the results of the procedures.

(1) The accountant must be a Certified Public Accountant in good standing with the American Institute of Certified Public Accountants or a Certified Internal Auditor in good standing with the Institute of Certified Internal Auditors.

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

(c) Agreed-Upon Procedures

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

(A) The auditor shall agree the specific purchases and resales/self-consumption by facility or pool name, unique identification number, certificate numbers of any certificates issued pursuant to Appendix B of these regulations, if any, and kilowatt hours and fuel type from the information used to prepare Schedule 1 to Schedule 1. The auditor shall agree the generic purchases and resales/self-consumption from the information used to prepare Schedule 1 to Schedule 1. The auditor shall also test the mathematical accuracy of Schedule 1.

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

(i) Agree the facility or pool name, unique identification number, certificate number numbers of any certificates issued pursuant to Appendix B of these regulations, if any, kilowatt hours and the fuel type from the invoice (or from the Energy Commission) to the information used to prepare Schedule 1.

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

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

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

(2) Sales: The auditor shall review the information used to prepare Schedule 2A, and perform the procedures identified below, noting any exceptions.

(A) Agree sales by fuel type and by product from the information used to prepare Schedule 2A to Schedule 2A. The auditor shall also check the mathematical accuracy of Schedule 2A.

(B) Select a sample of sales from the information used to prepare Schedule 2A, using the sampling guidelines discussed in subsection (b)(2), and agree the sales to customers by fuel type and product to the billing statement.

(3) Labels

(A) The auditor shall obtain copies of all quarterly and promotional labels for the previous year, and compare the percentages by fuel type in these disclosures to the percentages by fuel type calculated per subsection (d)(1)(C)(1) of section 1393 using the data supplied in Schedule 2A, noting any exceptions.

(B) The auditor shall obtain a copy of the annual power content label provided to customers for each product pursuant to subsection (e)(7) of section 1393. The auditor shall calculate the fuel and technology mix of the total annual retail sales for the product using the information provided in Schedule 2A and the equation

found in subsection (d)(1)(C) of section 1393. The auditor shall then compare these percentages to those identified for the actual power mix on the annual label. The auditor shall note any exceptions greater than 1%.

(C) The auditor shall determine if the absolute value of the percentage point difference for any fuel type identified on the annual label and any projected disclosure is greater than five percentage points, and, if so, whether the annual label displays a "Projected Power Mix" column that identifies the projected disclosure that varies the most from the actual fuel mix and a footnote explaining the reason for the discrepancy between the projected and actual fuel mix. The projected disclosure that varies the most from the actual fuel mix is determined pursuant to subsections (d)(2)(A) and (B) of section 1393.

(4) Pools

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

(i) The auditor shall agree the purchases by facility name, unique identification number, certificate number of any certificates issued pursuant to Appendix B of these regulations, if any, and kilowatt hours and fuel type from the information used to prepare Schedule 3 to Schedule 3. The auditor shall also test the mathematical accuracy of Schedule 3.

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

a. Agree the facility name, unique identification number, certificate number of any certificates issued pursuant to Appendix B of these regulations, if any, and kilowatt hours and fuel type from the invoice to the information used to prepare Schedule 3.

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

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

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

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

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