

AMENDED IN SENATE APRIL 12, 2004

SENATE BILL

No. 1478

Introduced by Senator Sher

February 19, 2004

An act to amend Sections 25740, 25743, 25744, and 25748 of, and to repeal Sections 25745 and 25749 of, the Public Resources Code, and to amend Sections ~~399.11, 399.13, 399.14, and 399.15 of~~, 387, 399.11, 399.12, 399.13, 399.14, 399.15, and 399.16 of, and to add Section 399.17 to, the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1478, as amended, Sher. Renewable energy.

(1) Existing law expresses the intent of the Legislature, in establishing the Renewable Energy Resources Program, to increase the amount of renewable electricity generated per year, so that it equals at least 17% of the total electricity generated for consumption in California per year by 2006.

This bill would recast that intent language so that the amount of renewable electricity generated per year is increased to an amount that equals at least 20% of the total electricity generated for consumption in California per year by 2010, rather than 2006, ~~and 33% by the year 2020~~. The bill would make conforming changes.

(2) *The Public Utilities Act imposes various duties and responsibilities on the Public Utilities Commission (CPUC) with respect to the purchase of electricity and requires the CPUC to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program. The program requires that a retail seller of electricity, including electrical corporations, community*

choice aggregators, and electric service providers, but not including local publicly owned electric utilities, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard). The renewables portfolio standard requires each electrical corporation to increase its total procurement of eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2017.

This bill would instead require that each electrical corporation increase its total procurement of eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010.

(3) Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to certify eligible renewable energy resources, to design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, and to allocate and award supplemental energy payments to cover above-market costs of renewable energy.

This bill would require the Energy Commission to establish a renewable energy credit, as defined, trading program and to develop tracking, accounting, verification, and enforcement mechanisms for the program. The bill would additionally require the Energy Commission to require any retail seller of electricity that does not meet the requirements of the renewables portfolio standard by directly owning or purchasing electricity generated from eligible renewable energy resources, to purchase renewable energy credits for a quantity of electricity produced from eligible renewable energy resources, that is sufficient to make up the shortfall. The bill would require the commission to establish rules authorizing electrical corporations to meet the renewables standard portfolio requirements using renewable energy credits. The bill would make other technical and conforming changes.

(4) Under existing law the governing board of a local publicly owned electric utility is responsible for implementing and enforcing a renewables portfolio standard that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and



financial resources and the goal of environmental improvement. Existing law requires the governing board of a local publicly owned electric utility to report certain information relative to renewable energy resources to its customers.

This bill would require the governing board of a local publicly owned electric utility to establish a renewables portfolio standard requiring the utility to increase its total procurement of eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010. In the event the local publicly owned electric utility fails to procure sufficient renewable energy resources in a given year to meet the annual target, the utility would be required to procure additional eligible renewable resources within the following 3 years. The bill would require the governing board of a local publicly owned electric utility to report certain information relative to renewable energy resources to the Energy Commission.

(5) Under the Public Utilities Act, the CPUC requires electrical corporations to identify a separate rate component to fund programs that enhance system reliability and provide in-state benefits. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. The funds are collected to support cost-effective energy efficiency and conservation activities, public interest research and development not adequately provided by competitive and regulated markets, and renewable energy resources (renewable energy public goods charge). Under existing law, 51.5% of the money collected as part of the renewable energy public goods charge is required to be used for programs designed to foster the development of new in-state renewable electricity generation facilities, and to secure for the state the environmental, economic, and reliability benefits that operation of those facilities will provide. Existing law also provides that any of those funds used for new in-state renewable electricity generation facilities are required to be expended in accordance with a specified report of the ~~State Energy Resources Conservation and Development~~ Commission to the Legislature, subject to certain requirements, including the awarding of supplemental energy payments.

This bill would require that these funds be awarded only to a project that is selected by an electrical corporation in accordance with a competitive solicitation procedure found by the ~~Public Utilities Commission (PUC)~~ CPUC to comply with the ~~California~~ Renewables



Portfolio Standard Program and that the project participant has entered into a purchase power agreement resulting from that solicitation that is approved by the ~~PUC~~ CPUC.

~~(3)–~~

(6) Existing law requires 17.5% of the money collected under the renewable energy public goods charge be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications, and that certain of funds be expended in accordance with the above-described report, subject to, among other things, the requirement that funding for emerging technologies be provided through a competitive, market-based process.

This bill would recast the competitive process so that the solicitation process includes provision for expressly notifying all potential bidders that emerging technologies are the subject of the solicitation.

~~The bill would also prohibit a sum greater than 10% of available energy technology funds from being awarded to a single project.~~

~~(4) Existing law requires the PUC to direct each electrical corporation to prepare renewable energy procurement plans, as described, to satisfy its obligations under the renewables portfolio standard.~~

~~This bill would require each electrical corporation to commence its renewable energy procurement with a competitive solicitation, as specified, that is held no later than June 1, 2005. This bill would prohibit, after January 1, 2005, bilateral contracts by electrical corporations with renewable energy resource until an electrical corporation has held at least 2 competitive solicitations and power purchase agreements have been entered into with selected projects and approved by the PUC.~~

~~(5)–~~

(7) *Existing law requires 10% of the money collected under the renewable energy public goods charge be used for customer credits to customers that entered into a direct transaction on or before September 20, 2001, for purchases of electricity produced by registered in-state renewable electricity generating facilities.*

This bill would delete this provision.

(8) Existing law requires the use of standard terms and conditions by all electrical corporations in contracting for eligible renewable energy resources.

This bill would require that those terms and conditions include the requirement that, no later than 6 months after the commission's approval of a purchase power agreement, the following information about the agreement be disclosed by the PUC: party names, resource type, project location, and project capacity.

~~(6)~~

(9) This bill would delete certain obsolete and duplicative provisions *and make technical and conforming changes*.

~~(7)~~

(10) Because a violation of the Public Utilities Act or an order of the PUC is a crime under existing law, the bill would impose a state-mandated local program by creating a new crime.

~~(8)~~

(11) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25740 of the Public Resources Code is
2 amended to read:

3 25740. It is the intent of the Legislature in establishing this
4 program, to increase the amount of renewable electricity
5 generated per year, so that it equals at least 20 percent of the total
6 electricity generated for consumption in California per year by the
7 year 2010 ~~and at least 33 percent by the year 2020~~.

8 SEC. 2. Section 25743 of the Public Resources Code is
9 amended to read:

10 25743. (a) Fifty-one and one-half percent of the money
11 collected pursuant to the renewable energy public goods charge
12 shall be used for programs designed to foster the development of
13 new in-state renewable electricity generation facilities, and to
14 secure for the state the environmental, economic, and reliability
15 benefits that operation of those facilities will provide.

(b) Any funds used for new in-state renewable electricity generation facilities pursuant to this section shall be expended in accordance with the report, subject to all of the following requirements:

(1) In order to cover the above market costs of renewable resources as approved by the Public Utilities Commission and selected by retail sellers to fulfill their obligations under Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, the commission shall award funds in the form of supplemental energy payments, subject to the following criteria:

(A) The commission may establish caps on supplemental energy payments. The caps shall be designed to provide for a viable energy market capable of achieving the goals of Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of the Public Utilities Code. The commission may waive application of the caps to accommodate a facility if it is demonstrated to the satisfaction of the commission that operation of the facility would provide substantial economic and environmental benefits to end-use customers subject to the funding requirements of the renewable energy public goods charge.

(B) Supplemental energy payments shall be awarded only to facilities that are eligible for funding under this subdivision.

(C) Supplemental energy payments awarded to facilities selected by an electrical corporation pursuant to Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code shall be paid for the lesser of 10 years, or the duration of the contract with the electrical corporation.

(D) The commission shall reduce or terminate supplemental energy payments for projects that fail either to commence and maintain operations consistent with the contractual obligations to an electrical corporation or that fail to meet eligibility requirements.

(E) Funds shall be managed in an equitable manner in order for retail sellers to meet their obligation under Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code.

~~(F) Funds described in subdivision (a) and in this paragraph may only be awarded to a project that is selected by an electric An~~

electrical corporation may receive funds pursuant to this section only if the project is selected by the corporation pursuant to a competitive solicitation that is found by the Public Utilities Commission to comply with the California Renewables Portfolio Standard Program under Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code and that has entered a purchase power agreement resulting from that solicitation that is approved by the Public Utilities Commission.

(2) The commission may determine as part of a solicitation, that a facility that does not meet the definition of an “in-state renewable electricity generation technology” facility solely because it is located outside the state, is eligible for funding under this subdivision if it meets all of the following requirements:

(A) It is located so that it is or will be connected to the Western Electricity Coordinating Council (WECC) transmission system.

(B) It is developed with guaranteed contracts to sell its generation to end-use customers subject to the funding requirements of Section 381, or to marketers that provide this guarantee for resale of the generation, for a period of time at least equal to the amount of time it receives incentive payments under this subdivision.

(C) It will not cause or contribute to any violation of a California environmental quality standard or requirement.

(D) If the facility is outside of the United States, it is developed and operated in a manner that is as protective of the environment as a similar facility located in the state.

(E) It meets any other condition established by the commission.

(3) Facilities that are eligible to receive funding pursuant to this subdivision shall be registered in accordance with criteria developed by the commission and those facilities may not receive payments for any electricity produced that has any of the following characteristics:

(A) Is sold under an existing long-term contract with an existing in-state electrical corporation if the contract includes fixed energy or capacity payments, except for that electricity that satisfies subparagraph (C) of paragraph (1) of subdivision (c) of Section 399.6 of the Public Utilities Code.

1 (B) Is used onsite or is sold to customers in a manner that
2 excludes competitive transition charge payments, or is otherwise
3 excluded from competitive transition charge payments.

4 (C) Is produced by a facility that is owned by an electrical
5 corporation or a local publicly owned electric utility as defined in
6 subdivision (d) of Section 9604 of the Public Utilities Code.

7 (D) Is a hydroelectric generation project that will require a new
8 or increased appropriation of water under Part 2 (commencing
9 with Section 1200) of Division 2 of the Water Code.

10 (E) Is a solid waste conversion facility, unless the facility meets
11 the criteria established in paragraph (3) of subdivision (a) of
12 Section 25741 and the facility certifies that any local agency
13 sending solid waste to the facility is in compliance with Division
14 30 (commencing with Section 40000), has reduced, recycled, or
15 composted solid waste to the maximum extent feasible, and shall
16 have been found by the California Integrated Waste Management
17 Board to have diverted at least 30 percent of all solid waste through
18 source reduction, recycling, and composting.

19 (4) Eligibility to compete for funds or to receive funds shall be
20 contingent upon having to sell the output of the renewable
21 electricity generation facility to customers subject to the funding
22 requirements of the renewable energy public goods charge.

23 (5) The commission may require applicants competing for
24 funding to post a forfeitable bid bond or other financial guaranty
25 as an assurance of the applicant's intent to move forward
26 expeditiously with the project proposed. The amount of any bid
27 bond or financial guaranty may not exceed 10 percent of the total
28 amount of the funding requested by the applicant.

29 (6) In awarding funding, the commission may provide
30 preference to projects that provide tangible demonstrable benefits
31 to communities with a plurality of minority or low-income
32 populations.

33 (c) Repowered existing facilities shall be eligible for funding
34 under this subdivision if the capital investment to repower the
35 existing facility equals at least 80 percent of the value of the
36 repowered facility.

37 (d) Facilities engaging in the direct combustion of municipal
38 solid waste or tires are not eligible for funding under this
39 subdivision.

(e) Production incentives awarded under this subdivision prior to January 1, 2002, shall commence on the date that a project begins electricity production, provided that the project was operational prior to January 1, 2002, unless the commission finds that the project will not be operational prior to January 1, 2002, due to circumstances beyond the control of the developer. Upon making a finding that the project will not be operational due to circumstances beyond the control of the developer, the commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond January 1, 2007.

(f) Facilities generating electricity from biomass energy shall be considered an in-state renewable electricity generation technology facility to the extent that they report to the commission the types and quantities of biomass fuels used and certify to the satisfaction of the commission that fuel utilization is limited to the following:

(1) Agricultural crops and agricultural wastes and residues.

(2) Solid waste materials such as waste pallets, crates, dunnage, manufacturing, and construction wood wastes, landscape or right-of-way tree trimmings, mill residues that are directly the result of the milling of lumber, and rangeland maintenance residues.

(3) Wood and wood wastes that meet all of the following requirements:

(A) Have been harvested pursuant to an approved timber harvest plan prepared in accordance with the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Sec. 4511) of Part 2 of Division 4).

(B) Have been harvested for the purpose of forest fire fuel reduction or forest stand improvement.

(C) Do not transport or cause the transportation of species known to harbor insect or disease nests outside zones of infestation or current quarantine zones, as identified by the Department of Food and Agriculture or the Department of Forestry and Fire Protection, unless approved by the Department of Food and Agriculture and the Department of Forestry and Fire Protection.

SEC. 3. Section 25744 of the Public Resources Code is amended to read:

1 25744. (a) Seventeen and one-half percent of the money
2 collected pursuant to the renewable energy public goods charge
3 shall be used for a multiyear, consumer-based program to foster
4 the development of emerging renewable technologies in
5 distributed generation applications.

6 (b) Any funds used for emerging technologies pursuant to this
7 section shall be expended in accordance with the report, subject to
8 all of the following requirements:

9 (1) Funding for emerging technologies shall be provided to
10 projects that are chosen through a competitive solicitation process
11 that expressly notifies all potential bidders that emerging
12 technologies are the subject of the solicitation and that is structured
13 so as to allow eligible emerging technology manufacturers and
14 suppliers to anticipate and plan for increased sale and installation
15 volumes over the life of the program.

16 (2) The program shall provide monetary rebates, buydowns, or
17 equivalent incentives, subject to paragraph (3), to purchasers,
18 lessees, lessors, or sellers of eligible electricity generating
19 systems. Incentives shall benefit the end-use consumer of
20 renewable generation by directly and exclusively reducing the
21 purchase or lease cost of the eligible system, or the cost of
22 electricity produced by the eligible system. Incentives shall be
23 issued on the basis of the rated electrical generating capacity of the
24 system measured in watts, or the amount of electricity production
25 of the system, measured in kilowatthours. Incentives shall be
26 limited to a maximum percentage of the system price, as
27 determined by the commission. ~~The commission shall not award~~
28 ~~any single project sum that exceeds 10 percent of available~~
29 ~~emerging technology funds.~~

30 (3) Eligible distributed emerging technologies are
31 photovoltaic, solar thermal electric, fuel cell technologies that
32 utilize renewable fuels, and wind turbines of not more than 50
33 kilowatts rated electrical generating capacity per customer site,
34 and other distributed renewable emerging technologies that meet
35 the emerging technology eligibility criteria established by the
36 commission. Eligible electricity generating systems are intended
37 primarily to offset part or all of the consumer's own electricity
38 demand, and shall not be owned by local publicly owned electric
39 utilities, nor be located at a customer site that is not receiving
40 distribution service from an electrical corporation that is subject

1 to the renewable energy public goods charge and contributing
2 funds to support programs under this chapter. All eligible
3 electricity generating system components shall be new and
4 unused, shall not have been previously placed in service in any
5 other location or for any other application, and shall have a
6 warranty of not less than five years to protect against defects and
7 undue degradation of electrical generation output. Systems and
8 their fuel resources shall be located on the same premises of the
9 end-use consumer where the consumer's own electricity demand
10 is located, and all eligible electricity generating systems shall be
11 connected to the utility grid in California. The commission may
12 require eligible electricity generating systems to have meters in
13 place to monitor and measure a system's performance and
14 generation. Only systems that will be operated in compliance with
15 applicable law and the rules of the Public Utilities Commission
16 shall be eligible for funding.

17 (4) The commission shall limit the amount of funds available
18 for any system or project of multiple systems and reduce the level
19 of funding for any system or project of multiple systems that has
20 received, or may be eligible to receive, any government or utility
21 funds, incentives, or credit.

22 (5) In awarding funding, the commission may provide
23 preference to systems that provide tangible demonstrable benefits
24 to communities with a plurality of minority or low-income
25 populations.

26 (6) In awarding funding, the commission shall develop and
27 implement eligibility criteria and a system that provides
28 preference to systems based upon system performance, taking into
29 account factors, including, but not limited to, shading, insulation
30 levels, and installation orientation.

31 (7) At least once annually, the commission shall publish and
32 make available to the public the balance of funds available for
33 emerging renewable energy resources for rebates, buydowns, and
34 other incentives for the purchase of these resources.

35 SEC. 4. Section 25745 of the Public Resources Code is
36 repealed.

37 SEC. 5. Section 25748 of the Public Resources Code is
38 amended to read:

39 25748. The commission shall report to the Legislature on or
40 before May 31, 2000, and on or before May 31 of every second

1 year thereafter, regarding the results of the mechanisms funded
2 pursuant to this chapter. Reports prepared pursuant to this section
3 shall include a description of the allocation of funds among
4 existing, new and emerging technologies; the allocation of funds
5 among programs, including consumer-side incentives; and the
6 need for the reallocation of money among those technologies. The
7 report shall identify the types and quantities of biomass fuels used
8 by facilities receiving funds pursuant to Section 25743 and their
9 impacts on improving air quality. The reports shall discuss the
10 progress being made toward achieving the targets established
11 under Section 25740 by each funding category authorized
12 pursuant to this chapter. The reports shall also address the
13 allocation of funds from interest on the accounts described in this
14 chapter, and money in the accounts described in subdivision (b) of
15 Section 25751. Money may be reallocated without further
16 legislative action among existing, new, and emerging technologies
17 and consumer-side programs in a manner consistent with the
18 report and with the latest report provided to the Legislature
19 pursuant to this section, except that reallocations may not reduce
20 the allocation established in Section 25743 nor increase the
21 allocation established in Section 25742.

22 SEC. 6. Section 25749 of the Public Resources Code is
23 repealed.

24 SEC. 7. *Section 387 of the Public Utilities Code is amended*
25 *to read:*

26 387. (a) ~~Each~~ *In order to fulfill unmet long-term energy*
27 *resource needs, the governing body of a local publicly owned*
28 *electric utility, as defined in Section 9604, shall be responsible for*
29 *implementing and enforcing a renewables portfolio standard that*
30 *recognizes the intent of the Legislature to encourage renewable*
31 *resources, while taking into consideration the effect of the*
32 *standard on rates, reliability, and financial resources and the goal*
33 *of environmental improvement establish a renewables portfolio*
34 *standard requiring the local publicly owned electric utility to*
35 *procure a minimum quantity of electricity generated from eligible*
36 *renewable energy resources as a specified percentage of total*
37 *kilowatthours sold to their retail end-use customers each calendar*
38 *year.*

39 (b) *Beginning January 1, 2005, the governing body of a local*
40 *publicly owned electric utility shall, pursuant to subdivision (a),*

1 *increase its total procurement of eligible renewable energy*
 2 *resources by at least an additional 1 percent of retail sales per year*
 3 *so that 20 percent of its retail sales are procured from eligible*
 4 *renewable energy resources no later than December 31, 2010.*

5 *(c) For purposes of setting annual procurement targets, the*
 6 *governing body of a local publicly owned electric utility shall*
 7 *establish an initial baseline based on the actual percentage of*
 8 *retail sales procured from eligible renewable energy resources in*
 9 *2003, and to the extent applicable, adjusted going forward on an*
 10 *annual basis. A local publicly owned electric utility with 20*
 11 *percent retail sales procured from eligible renewable energy*
 12 *resources in any year shall not be required to increase its*
 13 *procurement of those resources in the following year.*

14 *(d) In the event that a local publicly owned electric utility fails*
 15 *to procure sufficient eligible renewable energy resources in a given*
 16 *year to meet any annual target established pursuant to this section,*
 17 *the local publicly owned electric utility shall procure additional*
 18 *eligible renewable energy resources sufficient to satisfy the*
 19 *resulting deficit within the following three years.*

20 *(e) Each local publicly owned electric utility shall report, on an*
 21 *annual basis, to its—customers the State Energy Resources*
 22 *Conservation and Development Commission, the following:*

23 *(1) Expenditures of public goods funds collected pursuant to*
 24 *Section 385 for renewable energy resource development. Reports*
 25 *shall contain a description of programs, expenditures, and*
 26 *expected or actual results.*

27 *(2) The resource mix used to serve its customers by fuel type.*
 28 *Reports shall contain the contribution of each type of renewable*
 29 *energy resource with separate categories for those fuels considered*
 30 *eligible renewable energy resources as defined by Section 399.12.*

31 *SEC. 8. Section 399.11 of the Public Utilities Code is*
 32 *amended to read:*

33 *399.11. The Legislature finds and declares all of the*
 34 *following:*

35 *(a) In order to attain a target of 20 percent by the year 2010 and*
 36 *~~33 percent by the year 2020~~ renewable energy for the State of*
 37 *California and for the purposes of increasing the diversity,*
 38 *reliability, public health and environmental benefits of the energy*
 39 *mix, it is the intent of the Legislature that the California Public*
 40 *Utilities Commission and the State Energy Resources*

1 Conservation and Development Commission implement the
2 California Renewables Portfolio Standard Program described in
3 this article.

4 (b) Increasing California's reliance on renewable energy
5 resources may promote stable electricity prices, protect public
6 health, improve environmental quality, stimulate sustainable
7 economic development, create new employment opportunities,
8 and reduce reliance on imported fuels.

9 (c) The development of renewable energy resources may
10 ameliorate air quality problems throughout the state and improve
11 public health by reducing the burning of fossil fuels and the
12 associated environmental impacts.

13 (d) The California Renewables Portfolio Standard Program is
14 intended to complement the Renewable Energy Program
15 administered by the State Energy Resources Conservation and
16 Development Commission and established pursuant to Sections
17 383.5 and 445.

18 ~~SEC. 8.—~~

19 *SEC. 9. Section 399.12 of the Public Utilities Code is*
20 *amended to read:*

21 399.12. For purposes of this article, the following terms have
22 the following meanings:

23 (a) ~~(1)~~ "Eligible renewable energy resource" means an
24 electric generating facility that is one of the following:

25 (1) The facility meets the definition of "in-state renewable
26 electricity generation ~~technology~~ facility" in Section ~~383.5~~ 25741
27 *of the Public Resources Code*.

28 (2) A geothermal generation facility originally commencing
29 operation prior to September 26, 1996, shall be eligible for
30 purposes of adjusting a retail seller's baseline quantity of eligible
31 renewable energy resources except for ~~output~~ electricity certified
32 as incremental geothermal production by the Energy Commission,
33 provided that the incremental ~~output~~ electricity that is generated
34 was not sold to an electrical corporation under contract entered
35 into prior to September 26, 1996. For each facility seeking
36 certification, the Energy Commission shall determine historical
37 production trends and establish criteria for measuring incremental
38 geothermal production that recognizes the declining *geothermal*
39 output of existing steamfields and the contribution of capital
40 investments in the facility or wellfield.

(3) ~~The output of~~ *electricity generated by* a small hydroelectric generation facility of 30 megawatts or less procured or owned by an electrical corporation as of the date of enactment of this article shall be eligible only for purposes of establishing the baseline of an electrical corporation pursuant to paragraph (3) of subdivision (a) of Section 399.15. A new hydroelectric facility is not an eligible renewable energy resource if it will require a new or increased appropriation or diversion of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.

(4) A facility engaged in the combustion of municipal solid waste shall not be considered an eligible renewable resource unless it is located in Stanislaus County and was operational prior to September 26, 1996. ~~Output from~~ *Electricity generated by* such facilities shall be eligible only for the purpose of adjusting a retail seller's baseline quantity of eligible renewable energy resources.

(b) *"Energy Commission" means the State Energy Resources Conservation and Development Commission.*

(c) *"Retail seller" means an entity engaged in the retail sale of electricity to end-use customers, including any of the following:*

(1) An electrical corporation, as defined in Section 218.

(2) A community choice aggregator. The commission shall institute a rulemaking to determine the manner in which a community choice aggregator will participate in the renewables portfolio standard subject to the same terms and conditions applicable to an electrical corporation.

(3) An electric service provider, as defined in Section 218.3 subject to the following conditions:

(A) An electric service provider shall be considered a retail seller under this article for sales to any customer acquiring service after January 1, 2003.

(B) An electric service provider shall be considered a retail seller under this article for sales to all its customers beginning on the earlier of January 1, 2006, or the date on which a contract between an electric service provider and a retail customer expires. Nothing ~~on~~ *in* this subdivision may require an electric service provider to disclose the terms of the contract to the commission.

(C) The commission shall institute a rulemaking to determine the manner in which electric service providers will participate in the renewables portfolio standard. The electric service provider shall be subject to the same terms and conditions applicable to an

1 electrical corporation pursuant to this article. Nothing in this
2 paragraph shall impair a contract entered into between an electric
3 service provider and a retail customer prior to the suspension of
4 direct ~~access~~ *transactions* by the commission pursuant to Section
5 80110 of the Water Code.

6 (4) *A local publicly owned electrical utility, as defined in*
7 *Section 9604, shall comply with the renewables portfolio standard*
8 *obligation pursuant to the requirements of Section 387.*

9 (5) “Retail seller” does not include any of the following:

10 (A) A corporation or person employing cogeneration
11 technology or producing power consistent with subdivision (b) of
12 Section 218.

13 (B) The Department of Water Resources acting in its capacity
14 pursuant to Division 27 (commencing with Section 80000) of the
15 Water Code.

16 ~~(C) A local publicly owned electrical utility as defined in~~
17 ~~subdivision (d) of Section 9604.~~

18 ~~(e)~~

19 (d) “Renewables portfolio standard” means the specified
20 percentage of electricity generated by eligible renewable energy
21 resources that a retail seller is required to procure pursuant to
22 Sections 399.13 and 399.15.

23 (e) “Renewable energy credit” means a certificate of proof,
24 issued by the Energy Commission, that one kilowatthour of
25 electricity was generated by an eligible renewable energy resource
26 and delivered to a retail seller; a local publicly owned electric
27 utility in compliance with the requirements of Section 387, or the
28 Independent System Operator. The renewable energy credit shall
29 represent all renewable and environmental attributes associated
30 with electricity production by an eligible renewable energy
31 resource and environmental attributes associated with electricity
32 generated by an eligible renewable energy resource attributable to
33 the use of nonrenewable fuels shall not result in the creation of any
34 renewable energy credits.

35 SEC. 10. Section 399.13 of the Public Utilities Code is
36 amended to read:

37 399.13. The Energy Commission shall do all of the following:

38 (a) Certify eligible renewable energy resources that it
39 determines meet the criteria described in subdivision (a) of Section
40 399.12.

(b) Design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, to ensure that renewable energy output is counted only once for the purpose of meeting the renewables portfolio standard of this state or any other state, ~~and for verifying to certify renewable energy credits produced by eligible renewable energy resources, and to verify~~ retail product claims in this state or any other state. In establishing the guidelines governing this system, the Energy Commission shall collect data from electricity market participants that it deems necessary to verify compliance of retail sellers, in accordance with the requirements of this article and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). In seeking data from electrical corporations, the Energy Commission shall request data from the commission. The commission shall collect data from electrical corporations and remit the data to the Energy Commission within 90 days of the request.

(c) *Establish a system for tracking and verifying renewable energy credits. The Energy Commission shall consult with other states in the Western Electricity Coordinating Council transmission system to develop consistent mechanisms and protocols for verifying renewable energy credits and to prevent double counting of the electricity generated from any renewable energy resource.*

(d) Allocate and award supplemental energy payments pursuant to ~~Section 383.5 Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources~~, to eligible renewable energy resources to cover above-market costs of renewable energy. ~~These supplemental energy payments may only be awarded to a project that is selected by an electric corporation pursuant to a~~ *An electrical corporation may receive supplemental energy payments for projects selected by that corporation pursuant to a competitive solicitation that is found by the commission to comply with the California Renewables Portfolio Standard Program under this article and that has entered a purchase power agreement resulting from that solicitation that is approved by the commission. The Energy Commission may not award supplemental energy payments for the sale or purchase of renewable energy credits.*

1 ~~SEC. 9.~~

2 *SEC. 11.* Section 399.14 of the Public Utilities Code is
3 amended to read:

4 399.14. (a) The commission shall direct each electrical
5 corporation to prepare renewable energy procurement plans as
6 described in paragraph (3) to satisfy its obligations under the
7 renewables portfolio standard. To the extent feasible, this
8 procurement plan shall be proposed, reviewed, and adopted by the
9 commission as part of, and pursuant to, a general procurement plan
10 process. The commission shall require each electrical corporation
11 to review and update its renewable energy procurement plan as it
12 determines to be necessary. ~~Each electrical corporation shall~~
13 ~~commence its renewable energy procurement under this article~~
14 ~~with a competitive solicitation that complies with this article and~~
15 ~~is held no later than June 1, 2005. After January 1, 2005, bilateral~~
16 ~~contracts by electrical corporations with renewable energy~~
17 ~~resources are prohibited until the electrical corporation has held at~~
18 ~~least two competitive solicitations in compliance with this article~~
19 ~~and power purchase agreements are entered into with selected~~
20 ~~projects and approved by the commission.~~

21 (1) (A) The commission shall not require an electrical
22 corporation to conduct procurement to fulfill the renewables
23 portfolio standard until the commission determines either of the
24 following:

25 (i) The electrical corporation has attained an investment grade
26 credit rating as determined by at least two major rating agencies.

27 (ii) The electrical corporation is able to procure eligible
28 renewable energy resources on reasonable terms, those resources
29 can be financed if necessary, and the procurement will not impair
30 the restoration of an electrical corporation's creditworthiness. This
31 provision shall not apply before April 1, 2004, for any electrical
32 corporation that on June 30, 2003, is in federal court under Chapter
33 11 of the federal bankruptcy law.

34 (B) Within 90 days of the commission's determination as
35 provided in subparagraph (A), an electrical corporation shall
36 conduct solicitations to implement a renewable energy
37 procurement plan. The determination required by this paragraph
38 shall apply only to the requirements established pursuant to this
39 article. The requirements established for an electrical corporation
40 pursuant to Section 454.5 shall be governed by that section.

(2) Not later than six months after the effective date of this section, the commission shall adopt, by rule, for all electrical corporations, all of the following:

(A) A process for determining market prices pursuant to subdivision (c) of Section 399.15. The commission shall make specific determinations of market prices after the closing date of a competitive solicitation conducted by an electrical corporation for eligible renewable energy resources. In order to ensure that the market price established by the commission pursuant to subdivision (c) of Section 399.15 does not influence the amount of a bid submitted through the competitive solicitation in a manner that would increase the amount ratepayers are obligated to pay for renewable energy, and in order to ensure that the bid price does not influence the establishment of the market price, the electrical corporation shall not transmit or share the results of any competitive solicitation for eligible renewable energy resources until the commission has established market prices pursuant to subdivision (c) of Section 399.15.

(B) A process that provides criteria for the rank ordering and selection of least-cost and best-fit renewable resources to comply with the annual California Renewables Portfolio Standard Program obligations on a total cost basis. This process shall consider estimates of indirect costs associated with needed transmission investments and ongoing utility expenses resulting from integrating and operating eligible renewable energy resources.

(C) Flexible rules for compliance including, but not limited to, permitting electrical corporations to apply excess procurement in one year to subsequent years or inadequate procurement in one year to no more than the following three years.

(D) *Rules that authorize the use of renewable energy credits to satisfy annual procurement targets. At minimum, the rules shall do all of the following:*

(i) Prohibit a renewable energy credit from being counted more than once by any retail seller who purchases the credit.

(ii) Prohibit a renewable energy credit from being resold to any other retail seller of electricity and used for the purposes of complying with the renewable portfolio standard established under this chapter.

1 (iii) *Prohibit the sale of a renewable energy credit to a retail*
2 *seller in the state for the purposes of complying with the renewable*
3 *portfolio standard established under this chapter unless the seller*
4 *of the credit is an in-state renewable electricity generation*
5 *technology facility, as defined in Section 25741 of the Public*
6 *Resources Code.*

7 (iv) *Ensure that any revenues received by an electrical*
8 *corporation for the sale of excess renewable energy credits are*
9 *credited to ratepayers.*

10 (v) *In approving a renewable energy procurement plan, the*
11 *commission may limit the quantity of renewable energy credits that*
12 *can be separately procured to meet the annual procurement*
13 *targets.*

14 (E) Standard terms and conditions to be used by all electrical
15 corporations in contracting for eligible renewable energy
16 resources, including performance requirements for renewable
17 generators. ~~Those~~ A contract for the purchase of electricity
18 generated by an eligible renewable energy resource shall include
19 the renewable energy credits associated with all electricity
20 generation specified under the contract. The standard terms and
21 conditions shall include the requirement that, no later than six
22 months after the commission's approval of a purchase power
23 agreement entered under this article, the following information
24 about the agreement shall be disclosed by the commission: party
25 names, resource type, project location, and project capacity.

26 (3) Consistent with the goal of procuring the least-cost and
27 best-fit eligible renewable energy resources, the renewable energy
28 procurement plan submitted by an electrical corporation shall
29 include, but is not limited to, all of the following:

30 (A) An assessment of annual or multiyear portfolio supplies
31 and demand to determine the optimal mix of renewable generation
32 resources with deliverability characteristics that may include
33 peaking, dispatchable, baseload, firm, and as-available capacity.

34 (B) Provisions for employing available compliance flexibility
35 mechanisms established by the commission.

36 (C) A bid solicitation setting forth the need for renewable
37 generation of each deliverability characteristic, required online
38 dates, and locational preferences, if any.

39 (4) In soliciting and procuring eligible renewable energy
40 resources, each electrical corporation shall offer contracts of no

less than 10 years in duration, unless the commission approves of a contract of shorter duration. Any bid solicitation or contract of less than 10 years in duration shall be considered nonconforming and shall not represent more than 10 percent of the total amount solicited or purchased by a utility in any single solicitation.

(5) In soliciting and procuring eligible renewable energy resources, each electrical corporation may give preference to projects that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(b) The commission shall review and accept, modify, or reject each electrical corporation's renewable procurement plan 90 days prior to the commencement of renewable procurement pursuant to this article by the electrical corporation.

(c) The commission shall review the results of a renewable energy resources solicitation submitted for approval by an electrical corporation and accept or reject proposed contracts with eligible renewable energy resources based on consistency with the approved renewable procurement plan. If the commission determines that the bid prices are elevated due to a lack of effective competition amongst the bidders, the commission shall direct the electrical corporation to renegotiate such contracts or conduct a new solicitation.

(d) If an electrical corporation fails to comply with a commission order adopting a renewable procurement plan, the commission shall exercise its authority pursuant to Section 2113 to require compliance.

(e) Upon application by an electrical corporation, the commission may authorize another entity to enter into contracts on behalf of customers of the electrical corporation for deliveries of eligible renewable energy resources to satisfy the annual portfolio standard obligations, subject to similar terms and conditions applicable to an electrical corporation. The commission shall allow the procurement entity to recover reasonable costs through retail rates subject to review and approval.

(f) Procurement and administrative costs associated with long-term contracts entered into by an electrical corporation for eligible renewable energy resources pursuant to this article, at or below the market price determined by the commission pursuant to

subdivision (c) of Section 399.15, shall be deemed reasonable per se, and shall be recoverable in rates.

(g) For purposes of this article, “procure” means that a utility may acquire the renewable output of electric generation facilities that it owns or for which it has contracted. Nothing in this article is intended to imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling a retail seller’s obligation to comply with this article.

(h) Construction, alteration, demolition, installation, and repair work on an eligible renewable energy resource that receives production incentives or supplemental energy payments pursuant to ~~Section 383.5~~ 25742 of the Public Resources Code, including, but not limited to, work performed to qualify, receive, or maintain production incentives or supplemental energy payments is “public works” for the purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(i) *Renewable energy credits attributable to electricity generated by a source other than an electrical corporation that is delivered to an electrical corporation under the terms of an electricity purchase contract executed prior to January 1, 2001, shall be the property of the electrical corporation at no additional cost and go towards fulfilling the electrical corporation’s baseline procurement until the expiration of the contract.*

~~SEC. 10.~~

SEC. 12. Section 399.15 of the Public Utilities Code is amended to read:

399.15. (a) In order to fulfill unmet long-term resource needs, the commission shall establish a renewables portfolio standard requiring all electrical corporations to procure a minimum quantity of ~~output from~~ *electricity generated by eligible renewable energy resources, or an equivalent quantity of renewable energy credits*, as a specified percentage of total kilowatthours sold to their retail end-use customers each calendar year, if sufficient funds are made available pursuant to paragraph (2), and ~~Sections 399.6 and 383.5~~ *Section 399.6, and Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code*, to cover the above-market costs of eligible renewables, and subject to all of the following:

(1) An electric corporation shall not be required to enter into long-term contracts with eligible renewable energy resources that

exceed the market prices established pursuant to subdivision (c) of this section.

(2) The Energy Commission shall provide supplemental energy payments from funds in the New Renewable Resources Account in the Renewable Resource Trust Fund to eligible renewable energy resources pursuant to ~~Section 383.5, Chapter 8.6~~ *(commencing with Section 25740) of Division 15 of the Public Resources Code*, consistent with this article, for above-market costs. Funds may be provided or awarded by the Energy Commission only to a project that is selected by an electric corporation under a competitive solicitation that is found by the commission to comply with the California Renewables Portfolio Standard Program under this article and that has entered a purchase power agreement resulting from that solicitation that is approved by the commission. Indirect costs associated with the purchase of eligible renewable energy resources, such as imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades shall not be eligible for supplemental energy payments, but shall be recoverable by an electrical corporation in rates, as authorized by the commission.

(3) For purposes of setting annual procurement targets, the commission shall establish an initial baseline for each electrical corporation based on the actual percentage of retail sales procured from eligible renewable energy resources in 2001, and, to the extent applicable, adjusted going forward pursuant to subdivision (a) of Section 399.12.

(b) The commission shall implement annual procurement targets for each electrical corporation as follows:

(1) Beginning on January 1, 2003, each electrical corporation shall, pursuant to subdivision (a), increase its total procurement of eligible renewable energy resources by at least an additional 1 percent of retail sales per year so that 20 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, ~~2017~~ 2010. An electrical corporation with 20 percent of retail sales procured from eligible renewable energy resources in any year shall not be required to increase its procurement of such resources in the following year.

(2) Only for purposes of establishing these targets, the commission shall include all power sold to retail customers by the Department of Water Resources pursuant to Section 80100 of the

1 Water Code in the calculation of retail sales by an electrical
2 corporation.

3 (3) In the event that an electrical corporation fails to procure
4 sufficient eligible renewable energy resources in a given year to
5 meet any annual target established pursuant to this subdivision, the
6 electrical corporation shall procure additional eligible renewable
7 energy resources in subsequent years to compensate for the
8 shortfall if sufficient funds are made available pursuant to
9 paragraph (2), and Sections ~~399.6 and 383.5~~ *Section 399.6, and*
10 *Chapter 8.6 (commencing with Section 25740) of Division 15 of*
11 *the Public Resources Code*, to cover the above-market costs of
12 eligible renewables.

13 (4) If supplemental energy payments from the Energy
14 Commission, in combination with the market prices approved by
15 the commission, are insufficient to cover the above-market costs
16 of eligible renewable energy resources, the commission shall
17 allow an electrical corporation to limit its annual procurement
18 obligation to the quantity of eligible renewable energy resources
19 that can be procured with available supplemental energy
20 payments.

21 (c) The commission shall establish a methodology to determine
22 the market price of electricity for terms corresponding to the
23 length of contracts with renewable generators, in consideration of
24 the following:

25 (1) The long-term market price of electricity for fixed price
26 contracts, determined pursuant to the electrical corporation's
27 general procurement activities as authorized by the commission.

28 (2) The long-term ownership, operating, and fixed-price fuel
29 costs associated with fixed-price electricity from new generating
30 facilities.

31 (3) The value of different products including baseload,
32 peaking, and as-available output.

33 (d) The establishment of a renewables portfolio standard shall
34 not constitute implementation by the commission of the federal
35 Public Utility Regulatory Policies Act of 1978 (Public Law
36 95-617).

37 (e) The commission shall consult with the Energy Commission
38 in calculating market prices under subdivision (c) and establishing
39 other renewables portfolio standard policies.

40 ~~SEC. 11.~~

SEC. 13. Section 399.16 of the Public Utilities Code is amended to read:

399.16. ~~The commission~~ Energy Commission may consider an electric generating facility that is located outside the state to be an eligible renewable energy resource if ~~it~~ the facility meets the criteria described in Section 399.12 and all of the following requirements:

(a) It is located so that it is, or will be, connected to the Western Electricity Coordinating Council (WECC) transmission system.

(b) It is developed with guaranteed contracts to sell its generation, and demonstrates delivery of ~~energy~~ the contracted amount of electricity, to a retail seller or ~~the Independent System Operator~~ a local publicly owned electric utility in compliance with the requirements of Section 387.

(c) It participates in the accounting system to verify compliance with the renewables portfolio standard by retail sellers, once established by the ~~State Energy Resources Conservation and Development~~ Commission pursuant to subdivision (b) of Section 399.13.

SEC. 14. Section 399.17 is added to the Public Utilities Code, to read:

399.17. (a) Subject to the provisions of this section, the requirements of this article apply to an electrical corporation with 60,000 or fewer customer accounts in California that serves retail end-use customers outside California.

(b) For an electrical corporation with 60,000 or fewer customer accounts in California that serves retail end-use customers outside California, an eligible renewable energy resource includes a facility that is located outside California, if the facility is connected to the Western Electricity Coordinating Council (WECC) transmission system, provided all of the following conditions are met:

(1) The electricity generated by the facility is procured by the electrical corporation on behalf of its California customers, and is not used to fulfill renewable energy procurement requirements in other states.

(2) The electrical corporation participates in, and complies with, the accounting system administered by the Energy Commission pursuant to subdivision (b) of Section 399.13.

1 (3) *The Energy Commission verifies that the electricity*
2 *generated by the facility is eligible to meet the annual procurement*
3 *targets of this article.*

4 (c) *The commission shall determine the annual procurement*
5 *targets for an electrical corporation with 60,000 or fewer*
6 *customer accounts in California that serves retail end-use*
7 *customers outside California, as a specified percentage of total*
8 *kilowatthours sold by the electrical corporation to its retail*
9 *end-use customers in California in a calendar year.*

10 (d) *An electrical corporation with 60,000 or fewer customer*
11 *accounts in California that serves retail end-use customers outside*
12 *California, may use an integrated resource plan prepared in*
13 *compliance with the requirements of another state utility*
14 *regulatory commission, to fulfill the requirement to prepare a*
15 *renewable energy procurement plan pursuant to this article,*
16 *provided the plan meets the requirements of Sections 399.11,*
17 *399.12, 399.13, and 399.14, as modified by this section.*

18 (e) *Procurement and administrative costs associated with*
19 *long-term contracts entered into by an electrical corporation with*
20 *60,000 or fewer customer accounts in California that serves retail*
21 *end-use customers outside California, for eligible renewable*
22 *energy resources pursuant to this article, at or below the market*
23 *price determined by the commission pursuant to subdivision (c) of*
24 *Section 399.15, shall be deemed reasonable per se, and shall be*
25 *recoverable in rates of the electrical corporation's California*
26 *customers, provided the costs are not recoverable in rates in other*
27 *states served by the electrical corporation.*

28 SEC. 15. No reimbursement is required by this act pursuant
29 to Section 6 of Article XIII B of the California Constitution
30 because the only costs that may be incurred by a local agency or
31 school district will be incurred because this act creates a new crime
32 or infraction, eliminates a crime or infraction, or changes the
33 penalty for a crime or infraction, within the meaning of Section
34 17556 of the Government Code, or changes the definition of a
35 crime within the meaning of Section 6 of Article XIII B of the
36 California Constitution.