AMENDED IN ASSEMBLY JUNE 30, 2004

AMENDED IN ASSEMBLY JUNE 23, 2004

AMENDED IN ASSEMBLY JUNE 16, 2004

AMENDED IN SENATE MAY 4, 2004

AMENDED IN SENATE APRIL 22, 2004

AMENDED IN SENATE APRIL 12, 2004

SENATE BILL No. 1478

Introduced by Senator Sher
(Principal coauthor: Assembly Member Jackson)

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 *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 sold to retail customers in

California per year by 2010, rather than 2006. 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 prohibit the Energy Commission from certifying or awarding renewable energy credits for electricity generated pursuant to any electricity purchase contract with a retail seller executed before January 1, 2005, that does not contain explicit terms and conditions specifying the ownership or disposition of those credits. 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 CPUC to establish rules authorizing electrical corporations to meet the renewables portfolio standard requirements using renewable energy credits. The bill would require the Energy Commission to certify, and would specify criteria for, the eligibility of renewable energy credits associated with electricity delivered to a local publicly owned electric utility by an eligible renewable energy resource, for purposes of compliance with the portfolio standard by a retail seller. 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 energy 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 annually report certain information relative to renewable energy resources to its customers.*

This bill would additionally require that the governing board of a local publicly owned electric utility report to the Energy Commission, the information that they are required to annually report to their customers. The bill would require the Energy Commission to report to the Governor and Legislature no later than January 1, 2006, with recommendations for how to incentivize each local publicly owned electric utility to implement and enforce a renewables portfolio standard program consistent with the renewables portfolio standard program requirements applicable to a retail seller of electricity.

(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 Energy 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 pursuant to a competitive solicitation procedure found by the CPUC to comply with the 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 CPUC.

~~(5)~~

(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 funding would be provided to projects chosen through a competitive, market-based process that is in place for not less than five years, and would be structured to allow eligible emerging technology manufacturers and suppliers to anticipate and plan for increased sale and installation volumes over the life of the program.

~~(6)~~

(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.

~~(7)~~

(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 CPUC's approval of a purchase power agreement, the following information about the agreement be disclosed by the CPUC: party names, resource type, project location, and project capacity.

~~(8)~~

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

~~(9)~~

(10) Existing law makes a violation of the Public Utilities Act or a violation of an order of the CPUC a crime.

Because a violation of the provisions of the bill or of any CPUC order implementing these provisions would be a crime, this bill would impose a state-mandated local program by creating new crimes.

~~(10)~~

(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:

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

25740. It is the intent of the Legislature in establishing this program, to increase the amount of renewable electricity generated per year, so that it equals at least 20 percent of the total electricity sold to retail customers in California per year by the year 2010.

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

25743. (a) Fifty-one and one-half percent of the money collected pursuant to the renewable energy public goods charge shall 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.

(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) A project may receive funds pursuant to this section only if it is selected by an electrical 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. Projects selected by other retail sellers may receive supplemental energy payments so long as the Public Utilities Commission develops an approval process that incorporates the same terms and conditions applicable to comparable contracts with an electrical corporation.

(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.

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

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

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

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

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

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

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

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

(d) Facilities engaging in the direct combustion of municipal solid waste or tires are not eligible for funding under this 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 Section 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:

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

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

(1) Funding for emerging technologies shall be provided through a competitive, market-based process that is in place for a period of not less than five years, and is structured to allow eligible emerging technology manufacturers and suppliers to anticipate and plan for increased sale and installation volumes over the life of the program.

(2) The program shall provide monetary rebates, buydowns, or equivalent incentives, subject to paragraph (3), to purchasers, lessees, lessors, or sellers of eligible electricity generating systems. Incentives shall benefit the end-use consumer of renewable generation by directly and exclusively reducing the purchase or lease cost of the eligible system, or the cost of electricity produced by the eligible system. Incentives shall be issued on the basis of the rated electrical generating capacity of the system measured in watts, or the amount of electricity production of the system, measured in kilowatthours. Incentives shall be limited to a maximum percentage of the system price, as determined by the commission.

(3) Eligible distributed emerging technologies are photovoltaic, solar thermal electric, fuel cell technologies that utilize renewable fuels, and wind turbines of not more than 50 kilowatts rated electrical generating capacity per customer site, and other distributed renewable emerging technologies that meet the emerging technology eligibility criteria established by the commission. Eligible electricity generating systems are intended primarily to offset part or all of the consumer's own electricity demand, and shall not be owned by local publicly owned electric

utilities, nor be located at a customer site that is not receiving distribution service from an electrical corporation that is subject to the renewable energy public goods charge and contributing funds to support programs under this chapter. All eligible electricity generating system components shall be new and unused, shall not have been previously placed in service in any other location or for any other application, and shall have a warranty of not less than five years to protect against defects and undue degradation of electrical generation output. Systems and their fuel resources shall be located on the same premises of the end-use consumer where the consumer's own electricity demand is located, and all eligible electricity generating systems shall be connected to the utility grid in California. The commission may require eligible electricity generating systems to have meters in place to monitor and measure a system's performance and generation. Only systems that will be operated in compliance with applicable law and the rules of the Public Utilities Commission shall be eligible for funding.

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

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

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

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

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

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

25748. The commission shall report to the Legislature on or before May 31, 2000, and on or before May 31 of every second year thereafter, regarding the results of the mechanisms funded pursuant to this chapter. Reports prepared pursuant to this section shall include a description of the allocation of funds among existing, new and emerging technologies; the allocation of funds among programs, including consumer-side incentives; and the need for the reallocation of money among those technologies. The report shall identify the types and quantities of biomass fuels used by facilities receiving funds pursuant to Section 25743 and their impacts on improving air quality. The reports shall discuss the progress being made toward achieving the targets established under Section 25740 by each funding category authorized pursuant to this chapter. The reports shall also address the allocation of funds from interest on the accounts described in this chapter, and money in the accounts described in subdivision (b) of Section 25751. Money may be reallocated without further legislative action among existing, new, and emerging technologies and consumer-side programs in a manner consistent with the report and with the latest report provided to the Legislature pursuant to this section, except that reallocations may not reduce the allocation established in Section 25743 nor increase the allocation established in Section 25742.

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

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

387. (a) Each governing body of a local publicly owned electric utility, as defined in Section 9604, shall be 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.

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

(1) Expenditures of public goods funds collected pursuant to Section 385 for renewable energy resource development. Reports

shall contain a description of programs, expenditures, and expected or actual results.

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

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

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

(a) In order to attain a target of 20 percent by the year 2010 renewable energy for the State of California and for the purposes of increasing the diversity, reliability, public health and environmental benefits of the energy mix, it is the intent of the Legislature that the California Public Utilities Commission and the State Energy Resources Conservation and Development Commission implement the California Renewables Portfolio Standard Program described in this article.

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

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

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

(e) New and modified electric transmission facilities may be necessary to facilitate the state achieving its renewable portfolio standard targets. In order to attain a target of 20 percent by 2010, the state must expedite regulatory proceedings related to the addition or modification of electric transmission by fast-tracking the processing of transmission permit requests needed to facilitate the development or delivery of renewable generation. It is the intent of the Legislature that the commission report to the

Legislature annually, consistent with its reporting obligations under Section 1701.6, the actions it has taken to fast-track completion of proceedings related to the addition or modification of electric transmission needed to access renewable power, and the results of those actions.

~~SEC. 8.~~

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

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

(a) ‘‘Eligible renewable energy resource’’ means an electric generating facility that satisfies all of the following conditions:

(1) The facility meets the definition of ‘‘in-state renewable electricity generation facility’’ in Section 25741 of the Public Resources Code.

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

(B) This paragraph shall remain operative only until January 1, 2010.

(3) An existing small hydroelectric generation facility of 30 megawatts or less shall be eligible only if a retail seller owned or procured the electricity from the facility as of December 31, 2003, and that electricity shall be eligible only for purposes of establishing the baseline. 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. Electricity generated by a facility meeting these requirements shall be eligible only for the purpose of adjusting a retail seller's baseline quantity of eligible renewable energy resources.

(5) Notwithstanding paragraph (2), any geothermal electricity included in the baseline of a retail seller from a facility under a long-term contract executed before January 1, 2004, shall be eligible to satisfy the annual procurement targets of any retail seller upon the expiration of that contract.

(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 located within this state, 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 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 electrical corporation pursuant to this article. Nothing in this paragraph shall impair a contract entered into between an electric service provider and a retail customer prior to the suspension of direct transactions by the commission pursuant to Section 80110 of the Water Code.

(4) ‘‘Retail seller’’ does not include any of the following:

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

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

(C) A local publicly owned electric utility, as defined in Section 9604.

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

(e) ‘‘Renewable energy credit’’ means a certificate of proof, issued by the Energy Commission, that one unit of electricity was generated by an eligible renewable energy resource and delivered to a retail seller or the Independent System Operator. The renewable energy credit shall represent all renewable and environmental attributes associated with electricity production by an eligible renewable energy resource, unless the commission determines that certain environmental benefits unrelated to electricity production should be excluded. Any electricity generated by an eligible renewable energy resource attributable to the use of nonrenewable fuels, beyond a de minimus quantity, as determined by the Energy Commission, shall not result in the creation of any renewable energy credits.

~~SEC. 9.~~

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

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

(a) Certify eligible renewable energy resources that it determines meet the criteria described in subdivision (a) of Section 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, 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 Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, to eligible renewable energy resources to cover above-market costs of renewable energy. A project may receive supplemental energy payments only if it is selected by an electrical 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. Projects selected by other retail sellers may receive supplemental energy payments if the commission develops an approval process that incorporates the same terms and conditions applicable to comparable contracts with an electrical corporation. The Energy Commission may not award supplemental energy payments for the sale or purchase of renewable energy credits.

(e) Certify, for purposes of compliance with the *renewables* portfolio standard by a retail seller, the eligibility of renewable energy credits associated with deliveries of electricity by an eligible renewable energy resource to a local publicly owned electric utility if the Energy Commission determines that the following conditions have been satisfied:

(1) The local publicly owned electric utility procuring the electricity complies with the requirements of Section 387.

(2) The local publicly owned electric utility has established annual procurement targets comparable to those applicable to an electrical corporation, is procuring sufficient eligible renewable energy resources to satisfy these targets, and will not fail to satisfy these targets in the event that the renewable energy credit is sold to another retail seller.

(f) The Energy Commission shall not certify or award renewable energy credits for electricity generated pursuant to any electricity purchase contract with a retail seller executed before January 1, 2005, that does not contain explicit terms and conditions specifying the ownership or disposition of those credits. Deliveries under those contracts shall count towards the portfolio standard obligations of a retail seller.

(g) The Energy Commission shall not certify or award renewable energy credits for electricity generated under any purchase contract executed after January 1, 2005, pursuant to the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601, et seq.). Deliveries under these contracts shall count towards the portfolio standard obligations of a retail seller.

~~SEC. 10.~~

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

399.14. (a) The commission shall direct each electrical corporation to prepare renewable energy procurement plans as described in paragraph (3) to satisfy its obligations under the renewables portfolio standard. To the extent feasible, this procurement plan shall be proposed, reviewed, and adopted by the commission as part of, and pursuant to, a general procurement plan process. The commission shall require each electrical corporation to review and update its renewable energy procurement plan as it determines to be necessary.

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

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

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

(B) Within 90 days of the commission's determination as provided in subparagraph (A), an electrical corporation shall conduct solicitations to implement a renewable energy procurement plan. The determination required by this paragraph shall apply only to the requirements established pursuant to this article. The requirements established for an electrical corporation 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,~~, *including* 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 *a* 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 for compliance with the renewables portfolio standard of this state or any other state, or for verifying retail product claims in this state or any other state.

(ii) Prohibit the eligibility of any renewable energy credit for the purposes of complying with the portfolio standard unless the seller of the credit is a retail seller, an in-state renewable electricity generation technology facility, or any entity procuring power from an eligible renewable energy resource under a long-term electricity purchase contract.

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

(iv) In approving a renewable energy procurement plan, the commission may limit the quantity of renewable energy credits that can be procured unbundled from electricity generation to meet the annual procurement targets.

(v) Require every electrical corporation demonstrate that all purchased renewable energy credits are certified by the Energy Commission and comply with the requirements of this article, before purchase expenses may be recovered in rates.

(vi) Ensure that no retail seller shall be obligated to procure renewable energy credits to satisfy annual procurement targets in the event that supplemental energy payments, in combination with the market prices approved by the Energy Commission, are insufficient to cover the above-market costs of long-term contracts with eligible renewable energy resources.

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

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

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

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

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

(4) In soliciting and procuring eligible renewable energy 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.

(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 the 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 25742 or 25743 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.

~~SEC. 11.~~

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 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 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 electrical 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 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 electrical 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 into 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, 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 eligible renewable energy 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 Water Code in the calculation of retail sales by an electrical corporation.

(3) In the event that an electrical corporation fails to procure sufficient eligible renewable energy resources in a given year to meet any annual target established pursuant to this subdivision, the electrical corporation shall procure additional eligible renewable energy resources in subsequent years to compensate for the shortfall if sufficient funds are made available pursuant to paragraph (2), and 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.

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

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

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

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

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

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

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

~~SEC. 12.~~

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

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

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

(b) It is originally constructed for the purpose of supplying electricity under a guaranteed contract with a retail seller, and demonstrates delivery of the contracted amount of electricity to that retail seller.

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

~~SEC. 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.

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

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

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

(e) Procurement and administrative costs associated with long-term contracts entered into by an electrical corporation with 60,000 or fewer customer accounts in California that serves retail end-use customers outside California, 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 of the electrical corporation's California customers, provided the costs are not recoverable in rates in other states served by the electrical corporation.

~~SEC. 14.~~

SEC. 15. The State Energy Resources Conservation and Development Commission shall, on or before January 1, 2006, *report to the Governor and the Legislature with recommendations for how to incentivize each local publicly owned electric utility, as defined in Section 9604 of the Public Utilities Code, to implement and enforce a renewables portfolio standard program meeting the requirements of Section 399.15 of the Public Utilities Code, utilizing eligible renewable energy resources, as defined in Section 399.12. The commission may include the report as a component of the 2005 Integrated Energy Policy or the next renewable energy report required pursuant to Section 25758 of the Public Resources Code. The commission shall use existing resources to comply with this section.*

SEC. 16. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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