

AMENDED IN SENATE APRIL 19, 2005

SENATE BILL

No. 107

Introduced by Senators Simitian and Perata

January 20, 2005

An act to amend Sections 25740, 25741, 25743, and 25744 of, *to add Section 25752 to*, 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, to add Section 399.17 to, and to add Article 9 (commencing with Section 635) to Chapter 3 of Part 1 of Division 1 of, the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 107, as amended, Simitian. 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 revise and recast that intent language so that the amount of electricity generated per year from renewable energy resources is increased to an amount that equals at least 20% of the total electricity sold to retail customers in California per year by December 31, 2010. The bill would make conforming changes related to this provision.

(2) The Public Utilities Act imposes various duties and responsibilities on the *California* 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 retail seller, as defined, 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 tradeable 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 prohibit the Energy Commission from certifying or awarding tradeable renewable energy credits for electricity generated pursuant to any purchase contract executed after January 1, 2005, pursuant to a prescribed federal act. The bill would provide for the tracking of deliveries under these purchase contracts through a prescribed accounting system. 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 rules to prohibit an electrical corporation from selling renewable energy credits associated with eligible renewable energy resources included in the corporation's baseline quantity on January 1, 2004. 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 renewables portfolio standard by a retail seller. The bill would make other technical and conforming changes.

This bill would require the Energy Commission to review the feasibility of increasing the target for the amount of electricity to be procured from eligible renewable energy resources to 33% by the year 2020, and to report the results of the review to the Governor and Legislature by July 1, 2007.

(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 annually report the utility's status in implementing a renewables portfolio standard and progress toward attaining the standard to its customers and to report to the Energy Commission the information that the governing board is required to annually report to their customers. These additional reporting requirements would thereby impose a state-mandated local program. The bill would require the Energy Commission to report to the Governor and Legislature no later than January 1, 2007, 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 *California* Renewables Portfolio Standard Program and that the project participant has entered into an electricity purchase agreement resulting from that solicitation that is approved by the CPUC. The bill would authorize certain projects *supplying electricity to retail sellers, as defined, to the extent the retail seller is servicing load that is within the distribution area of an electrical corporation and subject to the renewable energy public goods charge*, to receive supplemental energy payments under certain circumstances. *The bill would prohibit the Energy Commission from awarding supplemental energy payments for the sale or purchase of renewable energy credits or to service load that is not subject to the renewable energy public goods charge.* The bill would revise existing criteria for Energy Commission consideration of an out-of-state electrical generation facility as an eligible renewable energy resource.

(6) Existing law requires that 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 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 make technical and nonsubstantive changes to these provisions.

(7) Existing law requires that 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 CPUC's approval of an electricity purchase agreement, the following information about the agreement be disclosed by the CPUC: party names, resource type, project location, and project capacity.

(9) This bill would require an electrical corporation or local publicly owned electric utility to adopt certain strategies in a long-term plan or a procurement plan, as applicable, to achieve efficiency in the use of fossil fuels and to address carbon emissions, as specified.

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

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

Because *certain of the provisions of this bill are a part of the act and an order of the CPUC would be required to implement these provisions, and* a violation of the provisions of the bill *that are part of the act* 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.

(12) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: $\frac{2}{3}$ -majority. Appropriation: ~~yes~~-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 electricity generated from
5 renewable energy resources per year, so that it equals at least 20
6 percent of total retail sales of electricity in California per year by
7 December 31, 2010.

8 SEC. 2. Section 25741 of the Public Resources Code is
9 amended to read:

10 25741. As used in this chapter, the following terms have the
11 following meaning:

12 (a) "In-state renewable electricity generation facility" means a
13 facility that meets all of the following criteria:

14 (1) The facility uses biomass, solar thermal, photovoltaic,
15 wind, geothermal, fuel cells using renewable fuels, small
16 hydroelectric generation of 30 megawatts or less, digester gas,
17 municipal solid waste conversion, landfill gas, ocean wave,
18 ocean thermal, or tidal current, and any additions or
19 enhancements to the facility using that technology.

20 (2) The facility is located in the state or near the border of the
21 state with the first point of connection to the Western Electricity
22 Coordinating Council (WECC) transmission system located
23 within this state.

24 (3) For the purposes of this subdivision, "solid waste
25 conversion" means a technology that uses a noncombustion
26 thermal process to convert solid waste to a clean-burning fuel for

1 the purpose of generating electricity, and that meets all of the
2 following criteria:

3 (A) The technology does not use air or oxygen in the
4 conversion process, except ambient air to maintain temperature
5 control.

6 (B) The technology produces no discharges of air
7 contaminants or emissions, including greenhouse gases as
8 defined in Section 42801.1 of the Health and Safety Code.

9 (C) The technology produces no discharges to surface or
10 groundwaters of the state.

11 (D) The technology produces no hazardous wastes.

12 (E) To the maximum extent feasible, the technology removes
13 all recyclable materials and marketable green waste compostable
14 materials from the solid waste stream prior to the conversion
15 process and the owner or operator of the facility certifies that
16 those materials will be recycled or composted.

17 (F) The facility at which the technology is used is in
18 compliance with all applicable laws, regulations, and ordinances.

19 (G) The technology meets any other conditions established by
20 the commission.

21 (H) The facility certifies that any local agency sending solid
22 waste to the facility diverted at least 30 percent of all solid waste
23 it collects through solid waste reduction, recycling, and
24 composting. For purposes of this paragraph “local agency”
25 means any city, county, or special district, or subdivision thereof,
26 which is authorized to provide solid waste handling services.

27 (b) “Renewable energy public goods charge” means that
28 portion of the nonbypassable system benefits charge authorized
29 to be collected and to be transferred to the Renewable Resource
30 Trust Fund pursuant to the Reliable Electric Service Investments
31 Act (Article 15 (commencing with Section 399) of Chapter 2.3 of
32 Part 1 of Division 1 of the Public Utilities Code).

33 (c) “Report” means the report entitled “Investing in
34 Renewable Electricity Generation in California” (June 2001,
35 Publication Number P500-00-022) submitted to the Governor
36 and the Legislature by the commission.

37 (d) (1) *“Retail seller” means an entity engaged in the retail*
38 *sale of electricity to end-use customers, including any of the*
39 *following:*

1 (A) An electrical corporation, as defined in Section 218 of the
2 Public Utilities Code, the load of which is subject to the
3 renewable energy public goods charge.

4 (B) A community choice aggregator that provides electricity
5 within the distribution territory of an electrical corporation
6 subject to the renewable energy public goods charge.

7 (C) An electric service provider, as defined in Section 218.3 of
8 the Public Utilities Code, to the extent the electric service
9 provider provides electricity within the distribution territory of
10 an electrical corporation and to the extent the load of the electric
11 service provider is subject to the renewable energy public goods
12 charge.

13 (2) "Retail seller" does not include any of the following:

14 (A) A corporation or person employing cogeneration
15 technology or producing power consistent with subdivision (b) of
16 Section 218 of the Public Utilities Code.

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

20 (C) A local publicly owned electrical utility as defined in
21 subdivision (d) of Section 9604 of the Public Utilities Code.

22 ~~SEC. 2.~~

23 SEC. 3. Section 25743 of the Public Resources Code is
24 amended to read:

25 25743. (a) Fifty-one and one-half percent of the money
26 collected pursuant to the renewable energy public goods charge
27 shall be used for programs designed to foster the development of
28 new in-state renewable electricity generation facilities, and to
29 secure for the state the environmental, economic, and reliability
30 benefits that operation of those facilities will provide.

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

35 (1) In order to cover the above market costs of eligible
36 renewable energy resources as approved by the Public Utilities
37 Commission and selected by retail sellers to fulfill their
38 obligations under Article 16 (commencing with Section 399.11)
39 of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities

1 Code, the commission shall award funds in the form of
2 supplemental energy payments, subject to the following criteria:

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

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

16 (C) Supplemental energy payments awarded to facilities
17 selected by an electrical corporation pursuant to Article 16
18 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of
19 Division 1 of the Public Utilities Code shall be paid for no longer
20 than 10 years, but shall, subject to the payment caps in
21 subparagraph (A), be equal to the cumulative above-market costs
22 relative to the applicable market price referent at the time of
23 initial contracting, over the duration of the contract with the
24 electrical corporation.

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

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

34 (F) A project may receive funds pursuant to this section only if
35 it is selected by an electrical corporation pursuant to a
36 competitive solicitation that is found by the Public Utilities
37 Commission to comply with the California Renewables Portfolio
38 Standard Program under Article 16 (commencing with Section
39 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public
40 Utilities Code, and that has entered into an electricity purchase

1 agreement resulting from that solicitation, that is approved by the
2 Public Utilities Commission. A project selected for an electricity
3 purchase agreement by another retail seller may receive
4 supplemental energy payments if the retail seller demonstrates to
5 the Public Utilities Commission that the selection of the project
6 is consistent with the results of a least-cost and best-fit process,
7 and the supplemental energy payments are reasonable in
8 comparison to those paid under similar contracts with other retail
9 sellers. The commission may not award supplemental energy
10 payments for the sale or purchase of renewable energy credits *or*
11 *to service load that is not subject to the renewable energy public*
12 *goods charge.*

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

19 (A) It is or will be connected to the Western Electricity
20 Coordinating Council (WECC) transmission system.

21 (B) It commences initial commercial operation after January 1,
22 2005.

23 (C) It has a contract with a retail seller or another entity to
24 supply electricity to end-use customers subject to the renewable
25 energy public goods charge for a period of time at least equal to
26 the duration of incentive payments provided pursuant to this
27 subdivision.

28 (D) It demonstrates delivery of the electricity under contract to
29 the retail seller serving end-use customers subject to the
30 renewable energy public goods charge.

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

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

36 (G) It meets any other condition established by the
37 commission.

38 (3) Facilities that are eligible to receive funding pursuant to
39 this subdivision shall be registered in accordance with criteria
40 developed by the commission and those facilities may not receive

1 payments for any electricity produced that has any of the
2 following characteristics:

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

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

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

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

18 (E) Is a solid waste conversion facility, unless the facility
19 meets the criteria established in paragraph (3) of subdivision (a)
20 of Section 25741 and the facility certifies that any local agency
21 sending solid waste to the facility is in compliance with Division
22 30 (commencing with Section 40000), has reduced, recycled, or
23 composted solid waste to the maximum extent feasible, and shall
24 have been found by the California Integrated Waste Management
25 Board to have diverted at least 30 percent of all solid waste
26 through source reduction, recycling, and composting.

27 (4) Eligibility to compete for funds or to receive funds shall be
28 contingent upon having to sell the ~~output of~~ *electricity generated*
29 *by* the renewable electricity generation facility to customers
30 subject to the funding requirements of the renewable energy
31 public goods charge.

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

38 (6) In awarding funding, the commission may provide
39 preference to projects that provide tangible demonstrable benefits

1 to communities with a plurality of minority or low-income
2 populations.

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

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

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

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

28 (1) Agricultural crops and agricultural wastes and residues.

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

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

36 (A) Have been harvested pursuant to an approved timber
37 harvest plan prepared in accordance with the Z'berg-Nejedly
38 Forest Practice Act of 1973 (Chapter 8 (commencing with
39 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~~

~~1 kilowatts rated electrical generating capacity per customer site,
2 and other distributed renewable emerging technologies that meet
3 the emerging technology eligibility criteria established by the
4 commission. Eligible electricity generating systems are intended
5 primarily to offset part or all of the consumer's own electricity
6 demand, and shall not be owned by local publicly owned electric
7 utilities, nor be located at a customer site that is not receiving
8 distribution service from an electrical corporation that is subject
9 to the renewable energy public goods charge and contributing
10 funds to support programs under this chapter. All eligible
11 electricity generating system components shall be new and
12 unused, shall not have been previously placed in service in any
13 other location or for any other application, and shall have a
14 warranty of not less than five years to protect against defects and
15 undue degradation of electrical generation output. Systems and
16 their fuel resources shall be located on the same premises of the
17 end-use consumer where the consumer's own electricity demand
18 is located, and all eligible electricity generating systems shall be
19 connected to the utility grid in California. The commission may
20 require eligible electricity generating systems to have meters in
21 place to monitor and measure a system's performance and
22 generation. Only systems that will be operated in compliance
23 with applicable law and the rules of the Public Utilities
24 Commission shall be eligible for funding.~~

~~25 (4) The commission shall limit the amount of funds available
26 for any system or project of multiple systems and reduce the
27 level of funding for any system or project of multiple systems
28 that has received, or may be eligible to receive, any government
29 or utility funds, incentives, or credit.~~

~~30 (5) In awarding funding, the commission may provide
31 preference to systems that provide tangible demonstrable benefits
32 to communities with a plurality of minority or low-income
33 populations.~~

~~34 (6) In awarding funding, the commission shall develop and
35 implement eligibility criteria and a system that provides
36 preference to systems based upon system performance, taking
37 into account factors, including shading, insulation levels, and
38 installation orientation.~~

~~39 (7) At least once annually, the commission shall publish and
40 make available to the public the balance of funds available for~~

1 emerging renewable energy resources for rebates, buydowns, and
2 other incentives for the purchase of these resources:

3 ~~(e) Notwithstanding Section 399.6 of the Public Utilities Code,~~
4 ~~the commission may expend, until December 31, 2008, up to~~
5 ~~sixty million dollars (\$60,000,000) of the funding allocated to the~~
6 ~~Renewable Resources Trust Fund for the program established in~~
7 ~~this section, subject to the repayment requirements of subdivision~~
8 ~~(f) of Section 25751.~~

9 *SEC. 4. Section 25744 of the Public Resources Code is*
10 *amended to read:*

11 25744. (a) Seventeen and one-half percent of the money
12 collected pursuant to the renewable energy public goods charge
13 shall be used for a multiyear, consumer-based program to foster
14 the development of emerging renewable technologies in
15 distributed generation applications.

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

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

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

37 (3) Eligible distributed emerging technologies are
38 photovoltaic, solar thermal electric, fuel cell technologies that
39 utilize renewable fuels, and wind turbines of not more than 50
40 kilowatts rated electrical generating capacity per customer site,

1 and other distributed renewable emerging technologies that meet
2 the emerging technology eligibility criteria established by the
3 commission. Eligible electricity generating systems are intended
4 primarily to offset part or all of the consumer's own electricity
5 demand, and shall not be owned by local publicly owned electric
6 utilities, nor be located at a customer site that is not receiving
7 distribution service from an electrical corporation that is subject
8 to the renewable energy public goods charge and contributing
9 funds to support programs under this chapter. All eligible
10 electricity generating system components shall be new and
11 unused, shall not have been previously placed in service in any
12 other location or for any other application, and shall have a
13 warranty of not less than five years to protect against defects and
14 undue degradation of electrical generation output. Systems and
15 their fuel resources shall be located on the same premises of the
16 end-use consumer where the consumer's own electricity demand
17 is located, and all eligible electricity generating systems shall be
18 connected to the utility grid in California. The commission may
19 require eligible electricity generating systems to have meters in
20 place to monitor and measure a system's performance and
21 generation. Only systems that will be operated in compliance
22 with applicable law and the rules of the Public Utilities
23 Commission shall be eligible for funding.

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

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

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

38 (7) At least once annually, the commission shall publish and
39 make available to the public the balance of funds available for

1 emerging renewable energy resources for rebates, buydowns, and
2 other incentives for the purchase of these resources.

3 (c) Notwithstanding Section 399.6 of the Public Utilities Code,
4 the commission may expend, until December 31, 2008, up to
5 sixty million dollars (\$60,000,000) of the funding allocated to the
6 Renewable Resources Trust Fund for the program established in
7 this section, subject to the repayment requirements of subdivision
8 (f) of Section 25751.

9 ~~SEC. 4.~~

10 *SEC. 5.* Section 25745 of the Public Resources Code is
11 repealed.

12 ~~SEC. 5.~~

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

15 *SEC. 7. Section 25752 is added to the Public Resources*
16 *Code, to read:*

17 *25752. The commission shall review the feasibility of*
18 *increasing the target for electricity to be procured from eligible*
19 *renewable energy resources to 33 percent by the year 2020, and*
20 *to report to the Governor and the Legislature by July 1, 2007,*
21 *with the results of the review. The review shall consider and*
22 *report on all of the following:*

23 *(a) Deliverability of electricity from eligible renewable energy*
24 *resources to end users and any needed additions or upgrades to*
25 *the transmission grid system.*

26 *(b) Potential impacts upon the rates of electrical corporations*
27 *and whether or not a renewable energy public goods charge is*
28 *necessary to fund the above-market costs of electricity generated*
29 *from eligible renewable energy resources.*

30 *(c) The progress made by electrical corporations toward*
31 *meeting the goal of procuring from renewable energy resources*
32 *20 percent of the electricity sold to retail customers per year by*
33 *December 31, 2010.*

34 *(d) The progress made by all other retail sellers and local*
35 *publicly owned electric utilities as defined in subdivision (d) of*
36 *Section 9604 of the Public Utilities Code, toward meeting the*
37 *goal of procuring from renewable energy resources 20 percent of*
38 *the electricity sold to retail customers per year by December 31,*
39 *2010.*

1 ~~SEC. 6.~~

2 *SEC. 8.* Section 387 of the Public Utilities Code is amended
3 to read:

4 387. (a) Each governing body of a local publicly owned
5 electric utility, as defined in Section 9604, shall be responsible
6 for implementing and enforcing a renewables portfolio standard
7 that recognizes the intent of the Legislature to encourage
8 renewable resources, while taking into consideration the effect of
9 the standard on rates, reliability, and financial resources and the
10 goal of environmental improvement.

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

15 (1) Expenditures of public goods funds collected pursuant to
16 Section 385 for renewable energy resource development. Reports
17 shall contain a description of programs, expenditures, and
18 expected or actual results.

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

24 (3) The utility's status in implementing a renewables portfolio
25 standard pursuant to subdivision (a) and the utility's progress
26 toward attaining the standard following implementation.

27 ~~SEC. 7. Section 399.11 of the Public Utilities Code is~~
28 ~~amended to read:~~

29 ~~399.11. The Legislature finds and declares all of the~~
30 ~~following:~~

31 ~~(a) In order to attain a target of generating 20 percent of total~~
32 ~~retail sales of electricity in California from renewable energy~~
33 ~~resources by December 31, 2010, and for the purposes of~~
34 ~~increasing the diversity, reliability, public health and~~
35 ~~environmental benefits of the energy mix, it is the intent of the~~
36 ~~Legislature that the California Public Utilities Commission and~~
37 ~~the State Energy Resources Conservation and Development~~
38 ~~Commission implement the California Renewables Portfolio~~
39 ~~Standard Program described in this article.~~

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

6 ~~(c) The development of renewable energy resources and the~~
7 ~~delivery of the electricity generated by those resources to~~
8 ~~customers in California may ameliorate air quality problems~~
9 ~~throughout the state and improve public health by reducing the~~
10 ~~burning of fossil fuels and the associated environmental impacts~~
11 ~~and by reducing in-state fossil fuel extraction.~~

12 ~~(d) The California Renewables Portfolio Standard Program is~~
13 ~~intended to complement the Renewable Energy Resources~~
14 ~~Program administered by the State Energy Resources~~
15 ~~Conservation and Development Commission and established~~
16 ~~pursuant to Chapter 8.6 (commencing with Section 25740) of~~
17 ~~Division 15 of the Public Resources Code.~~

18 ~~(e) New and modified electric transmission facilities may be~~
19 ~~necessary to facilitate the state achieving its renewables portfolio~~
20 ~~standard targets. In order to attain a target of generating 20~~
21 ~~percent of total retail sales of electricity in California from~~
22 ~~renewable energy resources by December 31, 2010, the state~~
23 ~~must expedite regulatory proceedings related to the addition or~~
24 ~~modification of electric transmission by fast-tracking the~~
25 ~~processing of transmission permit requests needed to facilitate~~
26 ~~the development or delivery of renewable generation. It is the~~
27 ~~intent of the Legislature that the commission report to the~~
28 ~~Legislature annually, consistent with its reporting obligations~~
29 ~~under Section 1701.6, the actions it has taken to fast-track~~
30 ~~completion of proceedings related to the addition or modification~~
31 ~~of electric transmission needed to access renewable energy~~
32 ~~resources, and the results of those actions.~~

33 ~~SEC. 8. Section 399.12 of the Public Utilities Code is~~
34 ~~amended to read:~~

35 ~~399.12. For purposes of this article, the following terms have~~
36 ~~the following meanings:~~

37 ~~(a) “Eligible renewable energy resource” means an electric~~
38 ~~generating facility that meets the definition of “in-state~~
39 ~~renewable electricity generation facility” in Section 25741 of the~~
40 ~~Public Resources Code, subject to the following limitations:~~

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

~~(2) (A) 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.~~

~~(B) Notwithstanding subparagraph (A), an existing conduit hydroelectric facility, as defined by Section 823a of Title 16 of the United States Code, of 30 megawatts or less, shall be eligible for the purposes of satisfying a retail seller's baseline quantity of eligible renewable energy resources. A new conduit hydroelectric facility, as defined by Section 823a of Title 16 of the United States Code, of 30 megawatts or less, shall be an eligible renewable energy resource so long as it does not require a new or increased appropriation or diversion of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.~~

~~(3) 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~~

1 of adjusting a retail seller's baseline quantity of eligible
2 renewable energy resources.

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

8 (b) ~~"Energy Commission" means the State Energy Resources~~
9 ~~Conservation and Development Commission.~~

10 (e) ~~"Retail seller" means an entity engaged in the retail sale of~~
11 ~~electricity to end-use customers located within the state,~~
12 ~~including any of the following:~~

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

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

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

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

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

31 (C) ~~The commission shall institute a rulemaking to determine~~
32 ~~the manner in which electric service providers will participate in~~
33 ~~the renewables portfolio standard program. The electric service~~
34 ~~provider shall be subject to the same terms and conditions~~
35 ~~applicable to an electrical corporation pursuant to this article.~~
36 ~~Nothing in this paragraph shall impair a contract entered into~~
37 ~~between an electric service provider and a retail customer prior to~~
38 ~~the suspension of direct access by the commission pursuant to~~
39 ~~Section 80110 of the Water Code.~~

40 (4) ~~"Retail seller" does not include any of the following:~~

1 ~~(A) A corporation or person employing cogeneration~~
2 ~~technology or producing electricity consistent with subdivision~~
3 ~~(b) of Section 218.~~

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

7 ~~(C) A local publicly owned electric utility as defined in~~
8 ~~subdivision (d) of Section 9604.~~

9 ~~(d) “Renewables portfolio standard” means the specified~~
10 ~~percentage of electricity generated by eligible renewable energy~~
11 ~~resources that a retail seller is required to procure pursuant to~~
12 ~~Sections 399.13 and 399.15.~~

13 ~~(e) “Renewable energy credit” means a certificate of proof,~~
14 ~~issued through the accounting system established by the Energy~~
15 ~~Commission pursuant to Section 399.13, that one unit of~~
16 ~~electricity was generated by an eligible renewable energy~~
17 ~~resource and delivered to a retail seller, the Independent System~~
18 ~~Operator, or a local publicly owned electric utility subject to the~~
19 ~~requirements of subdivision (e) of Section 399.13. The Energy~~
20 ~~Commission shall ensure that the renewable energy credit~~
21 ~~includes all renewable and environmental attributes associated~~
22 ~~with the production of electricity from the eligible renewable~~
23 ~~energy resource, and shall rely on the definition of “renewable~~
24 ~~energy credit” adopted as a standard term by the commission.~~
25 ~~Any electricity generated by an eligible renewable energy~~
26 ~~resource attributable to the use of nonrenewable fuels, beyond a~~
27 ~~de minimus quantity, as determined by the Energy Commission,~~
28 ~~shall not result in the creation of any renewable energy credits.~~

29 ~~SEC. 9. Section 399.13 of the Public Utilities Code is~~
30 ~~amended to read:~~

31 ~~399.13. The Energy Commission shall do all of the following:~~

32 ~~(a) Certify eligible renewable energy resources that it~~
33 ~~determines meet the criteria described in subdivision (a) of~~
34 ~~Section 399.12.~~

35 ~~(b) Design and implement an accounting system to verify~~
36 ~~compliance with the renewables portfolio standard by retail~~
37 ~~sellers, to ensure that electricity generated by an eligible~~
38 ~~renewable energy resource is counted only once for the purpose~~
39 ~~of meeting the renewables portfolio standard of this state or any~~
40 ~~other state, to certify renewable energy credits produced by~~

1 eligible renewable energy resources, and to verify retail product
2 claims in this state or any other state. In establishing the
3 guidelines governing this accounting system, the Energy
4 Commission shall collect data from electricity market
5 participants that it deems necessary to verify compliance of retail
6 sellers, in accordance with the requirements of this article and the
7 California Public Records Act (Chapter 3.5 (commencing with
8 Section 6250) of Division 7 of Title 1 of the Government Code).
9 In seeking data from electrical corporations, the Energy
10 Commission shall request data from the commission. The
11 commission shall collect data from electrical corporations and
12 remit the data to the Energy Commission within 90 days of the
13 request.

14 (e) Establish a system for tracking and verifying renewable
15 energy credits. The Energy Commission shall consult with other
16 states in the Western Electricity Coordinating Council
17 transmission system to develop consistent mechanisms and
18 protocols for verifying renewable energy credits and to prevent
19 double counting of the electricity generated from any eligible
20 renewable energy resource.

21 (d) Allocate and award supplemental energy payments
22 pursuant to Chapter 8.6 (commencing with Section 25740) of
23 Division 15 of the Public Resources Code, to eligible renewable
24 energy resources to cover above-market costs of renewable
25 energy. A project may receive supplemental energy payments
26 only if it is selected by an electrical corporation pursuant to a
27 competitive solicitation that is found by the commission to
28 comply with the California Renewables Portfolio Standard
29 Program under this article and that has entered into an electricity
30 purchase agreement resulting from that solicitation that is
31 approved by the commission. A project selected for an electricity
32 purchase agreement by another retail seller may receive
33 supplemental energy payments if the retail seller demonstrates to
34 the commission that the selection of the project is consistent with
35 the results of a least-cost and best-fit process, and that the
36 supplemental energy payments are reasonable in comparison to
37 those paid under similar contracts with other retail sellers. The
38 Energy Commission shall not award supplemental energy
39 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 this article.~~

~~(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 the targets, and will not fail to satisfy the targets in the event that the renewable energy credit is sold to another retail seller.~~

~~(f) The Energy Commission shall not certify or award tradeable renewable energy credits for electricity generated pursuant to any electricity purchase contract with a retail seller executed before January 1, 2005, unless the contract contains explicit terms and conditions specifying the ownership or disposition of those credits. Deliveries under those contracts shall be tracked through the accounting system described in subdivision (b) and included in the baseline quantity of eligible renewable energy resources of the purchasing retail seller pursuant to Section 399.15.~~

~~(g) The Energy Commission shall not certify or award tradeable renewable energy credits for electricity generated under any electricity purchase contract executed after January 1, 2005, pursuant to the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Sec. 2601 et seq.). Deliveries under the electricity purchase contracts shall be tracked through the accounting system described in subdivision (b) and count towards the renewables portfolio standard obligations of the purchasing retail seller.~~

~~SEC. 10. Section 399.14 of the Public Utilities Code is amended to read:~~

~~399.14. (a) The commission shall direct each electrical corporation to prepare a renewable energy procurement plan 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~~

1 the commission as part of, and pursuant to, a general
2 procurement plan process. The commission shall require each
3 electrical corporation to review and update its renewable energy
4 procurement plan as it determines to be necessary.

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

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

11 (ii) The electrical corporation is able to procure eligible
12 renewable energy resources on reasonable terms, those resources
13 can be financed if necessary, and the procurement will not impair
14 the restoration of an electrical corporation's creditworthiness.
15 This provision shall not apply before April 1, 2004, for any
16 electrical corporation that on June 30, 2003, is in federal court
17 under Chapter 11 of the federal Bankruptcy Code (11 U.S.C. Sec.
18 1101 et seq.).

19 (B) Within 90 days of the commission's determination as
20 provided in subparagraph (A), an electrical corporation shall
21 conduct solicitations to implement a renewable energy
22 procurement plan. The determination required by this paragraph
23 shall apply only to the requirements established pursuant to this
24 article. The requirements established for an electrical corporation
25 pursuant to Section 454.5 shall be governed by that section.

26 (2) The commission shall adopt, by rule, for all electrical
27 corporations, all of the following:

28 (A) A process for determining market prices pursuant to
29 subdivision (c) of Section 399.15. The commission shall make
30 specific determinations of market prices after the closing date of
31 a competitive solicitation conducted by an electrical corporation
32 for eligible renewable energy resources. In order to ensure that
33 the market price established by the commission pursuant to
34 subdivision (c) of Section 399.15 does not influence the amount
35 of a bid submitted through the competitive solicitation in a
36 manner that would increase the amount ratepayers are obligated
37 to pay for electricity generated by eligible renewable energy
38 resources, and in order to ensure that the bid price does not
39 influence the establishment of the market price, the electrical
40 corporation shall not transmit or share the results of any

~~1 competitive solicitation for eligible renewable energy resources~~
~~2 until the commission has established market prices pursuant to~~
~~3 subdivision (c) of Section 399.15.~~

~~4 (B) A process that provides criteria for the rank ordering and~~
~~5 selection of least-cost and best-fit eligible renewable energy~~
~~6 resources to comply with the annual California Renewables~~
~~7 Portfolio Standard Program obligations on a total cost basis. This~~
~~8 process shall consider estimates of indirect costs associated with~~
~~9 needed transmission investments and ongoing utility expenses~~
~~10 resulting from integrating and operating eligible renewable~~
~~11 energy resources.~~

~~12 (C) Flexible rules for compliance, including both of the~~
~~13 following:~~

~~14 (i) Rules permitting electrical corporations to apply excess~~
~~15 procurement in one year to subsequent years or inadequate~~
~~16 procurement in one year to no more than the following three~~
~~17 years.~~

~~18 (ii) Rules permitting electrical corporations to purchase~~
~~19 renewable energy credits from an eligible renewable energy~~
~~20 resource pursuant to a contract of at least 10 years duration,~~
~~21 under the condition that the electricity generated by the eligible~~
~~22 renewable energy resource is sold into the California electricity~~
~~23 market and no feasible or cost-effective transmission facilities~~
~~24 exist to deliver the electricity to the electrical corporation's~~
~~25 service territory.~~

~~26 (D) Standard terms and conditions to be used by all electrical~~
~~27 corporations in contracting for eligible renewable energy~~
~~28 resources, including performance requirements for renewable~~
~~29 generators. A contract for the purchase of electricity generated by~~
~~30 an eligible renewable energy resource shall include the~~
~~31 renewable energy credits associated with all electricity~~
~~32 generation specified under the contract. The standard terms and~~
~~33 conditions shall include the requirement that, no later than six~~
~~34 months after the commission's approval of an electricity~~
~~35 purchase agreement entered into pursuant to this article, the~~
~~36 following information about the agreement shall be disclosed by~~
~~37 the commission: party names, resource type, project location, and~~
~~38 project capacity.~~

~~39 (3) Consistent with the goal of procuring the least-cost and~~
~~40 best-fit eligible renewable energy resources, the renewable~~

1 energy procurement plan submitted by an electrical corporation
2 shall include all of the following:

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

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

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

13 (4) In soliciting and procuring eligible renewable energy
14 resources, each electrical corporation shall offer contracts of no
15 less than 10 years in duration, unless the commission approves of
16 a contract of shorter duration. Any bid solicitation or contract of
17 less than 10 years in duration shall be considered nonconforming.

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

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

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

36 (d) If an electrical corporation fails to comply with a
37 commission order adopting a renewable energy procurement
38 plan, the commission shall exercise its authority pursuant to
39 Section 2113 to require compliance. The commission shall
40 enforce comparable penalties on any other retail seller that fails

1 to meet annual procurement targets established pursuant to
2 Section 399.15.

3 (e) Upon application by a retail seller, the commission may
4 authorize a procurement entity to enter into contracts on behalf of
5 customers of the retail seller for deliveries of eligible renewable
6 energy resources to satisfy the annual renewables portfolio
7 standard obligations, subject to similar terms and conditions
8 applicable to a retail seller. The commission shall allow the
9 procurement entity to recover reasonable costs through retail
10 rates subject to review and approval.

11 (f) Procurement and administrative costs associated with
12 long-term contracts entered into by an electrical corporation for
13 eligible renewable energy resources pursuant to this article, at or
14 below the market price determined by the commission pursuant
15 to subdivision (e) of Section 399.15, shall be deemed reasonable
16 per se, and shall be recoverable in rates.

17 (g) For purposes of this article, “procure” means that a retail
18 seller may acquire the electricity generated by an eligible
19 renewable energy resource that it owns or for which it has
20 contracted. Nothing in this article is intended to imply that the
21 purchase of electricity from third parties in a wholesale
22 transaction is the preferred method of fulfilling a retail seller’s
23 obligation to comply with this article.

24 (h) Construction, alteration, demolition, installation, and repair
25 work on an eligible renewable energy resource that receives
26 production incentives or supplemental energy payments pursuant
27 to Section 25742 or 25743 of the Public Resources Code,
28 including work performed to qualify, receive, or maintain
29 production incentives or supplemental energy payments is
30 “public works” for the purposes of Chapter 1 (commencing with
31 Section 1720) of Part 7 of Division 2 of the Labor Code.

32 SEC. 11. Section 399.15 of the Public Utilities Code is
33 amended to read:

34 399.15. (a) In order to fulfill unmet long-term resource
35 needs, the commission shall establish a renewables portfolio
36 standard requiring all electrical corporations to procure a
37 minimum quantity of electricity generated by eligible renewable
38 energy resources, or an equivalent quantity of renewable energy
39 credits, as a specified percentage of total kilowatthours sold to
40 their retail end-use customers each calendar year, if sufficient

1 funds are made available pursuant to paragraph (2), and Section
2 399.6 and Chapter 8.6 (commencing with Section 25740) of
3 Division 15 of the Public Resources Code, to cover the
4 above-market costs of eligible renewables.

5 (b) The commission shall implement annual procurement
6 targets for each retail seller as follows:

7 (1) Beginning on January 1, 2003, each retail seller shall,
8 pursuant to subdivision (a), increase its total procurement of
9 eligible renewable energy resources by at least an additional 1
10 percent of retail sales per year so that 20 percent of its retail sales
11 are procured from eligible renewable energy resources no later
12 than December 31, 2010.

13 (2) For purposes of setting annual procurement targets, the
14 commission shall establish an initial baseline for each electrical
15 corporation based on the actual percentage of retail sales
16 procured from eligible renewable energy resources in 2001, and,
17 to the extent applicable, adjusted going forward pursuant to
18 subdivision (a) of Section 399.12. The commission shall
19 establish baselines and set annual procurement targets for other
20 retail sellers that ensure that the departure of customer loads from
21 bundled service by an electrical corporation do not cause any
22 reduction in the quantity of eligible renewable energy resources
23 that would have otherwise been procured by the electrical
24 corporation to serve those customers.

25 (3) Only for purposes of establishing these targets, the
26 commission shall include all electricity sold to retail customers
27 by the Department of Water Resources pursuant to Section 80100
28 of the Water Code in the calculation of retail sales by an
29 electrical corporation.

30 (4) In the event that a retail seller fails to procure sufficient
31 eligible renewable energy resources in a given year to meet any
32 annual target established pursuant to this subdivision, the retail
33 seller shall procure additional eligible renewable energy
34 resources in subsequent years to compensate for the shortfall if
35 sufficient funds are made available pursuant to paragraph (2) of
36 subdivision (a), Section 399.6, and Chapter 8.6 (commencing
37 with Section 25740) of Division 15 of the Public Resources
38 Code, to cover the above-market costs of eligible renewable
39 energy resources.

~~(5) 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 a retail seller to limit its annual procurement obligation to the quantity of eligible renewable energy resources that can be procured with available supplemental energy payments. A retail seller shall not be required to enter into long-term contracts with operators of eligible renewable energy resources that exceed the market prices established pursuant to subdivision (c).~~

~~(e) 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 electricity.~~

~~(d) The Energy Commission shall provide supplemental energy payments from funds in the New Renewable Resources Account of 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. Indirect costs associated with the purchase of eligible renewable energy resources by an electrical corporation, including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades, shall not be eligible for supplemental energy payments, but are recoverable in rates, as authorized by the commission.~~

~~(e) 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).~~

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

4 ~~(g) The commission shall establish rules that authorize the use~~
5 ~~of renewable energy credits to satisfy annual procurement~~
6 ~~targets. At a minimum, the rules shall do all of the following:~~

7 ~~(1) Prohibit a renewable energy credit from being counted~~
8 ~~more than once by any retail seller for compliance with the~~
9 ~~renewables portfolio standard of this state or any other state, or~~
10 ~~for verifying retail product claims in this state or any other state.~~

11 ~~(2) Ensure that any revenues received by an electrical~~
12 ~~corporation for the sale of renewable energy credits are credited~~
13 ~~to ratepayers.~~

14 ~~(3) Limit the quantity of renewable energy credits that can be~~
15 ~~procured unbundled from electricity generation to meet the~~
16 ~~annual procurement targets of a retail seller.~~

17 ~~(4) Require every retail seller to demonstrate that all~~
18 ~~purchased renewable energy credits are certified by the Energy~~
19 ~~Commission and comply with the requirements of this article.~~

20 ~~(5) Ensure that no retail seller shall be obligated to procure~~
21 ~~renewable energy credits to satisfy annual procurement targets in~~
22 ~~the event that supplemental energy payments, in combination~~
23 ~~with the market prices approved by the commission, are~~
24 ~~insufficient to cover the above-market costs of long-term~~
25 ~~contracts with eligible renewable energy resources.~~

26 ~~(6) Prohibit an electrical corporation from selling renewable~~
27 ~~energy credits associated with eligible renewable energy~~
28 ~~resources included in that electrical corporation's baseline~~
29 ~~quantity on January 1, 2004.~~

30 ~~(7) Prohibit sales of renewable energy credits by an electrical~~
31 ~~corporation during any year in which the electrical corporation~~
32 ~~utilizes flexible compliance rules to permit inadequate~~
33 ~~procurement pursuant to subparagraph (C) of paragraph (2) of~~
34 ~~subdivision (a) of Section 399.14.~~

35 ~~SEC. 12. Section 399.16 of the Public Utilities Code is~~
36 ~~amended to read:~~

37 ~~399.16. The Energy Commission may consider an electric~~
38 ~~generating facility that is located outside the state to be an~~
39 ~~eligible renewable energy resource if the facility meets the~~

~~criteria described in Section 399.12 and all of the following requirements:~~

~~(a) It is connected to the Western Electricity Coordinating Council (WECC) transmission system.~~

~~(b) It commences initial commercial operation after January 1, 2006, supplies 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. 9. 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 *generating 20 percent of total retail sales of electricity in California from renewable energy for the State of California resources by December 31, 2010*, 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 *and the delivery of the electricity generated by those resources to customers in California* may ameliorate air quality problems throughout the state and improve public health by reducing the burning of fossil fuels and the associated environmental impacts *and by reducing in-state fossil fuel extraction*.

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

pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code.

(e) New and modified electric transmission facilities may be necessary to facilitate the state achieving its renewables portfolio standard targets.

SEC. 10. 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 ~~is one of the following meets the definition of “in-state renewable electricity generation facility” in Section 25741 of the Public Resources Code, subject to the following limitations:~~

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

~~(2)~~

(1) 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 ~~output~~ electricity certified as incremental geothermal production by the Energy Commission, provided that the incremental ~~output~~ electricity 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. This paragraph shall remain operative only until January 1, 2010.

~~(3) The output of a~~

(2) (A) An existing 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 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 of an electrical corporation pursuant to paragraph (3) of subdivision~~

1 ~~(a) of Section 399.15.~~ A new hydroelectric facility is not an
2 eligible renewable energy resource if it will require a new or
3 increased appropriation or diversion of water under Part 2
4 (commencing with Section 1200) of Division 2 of the Water
5 Code.

6 *(B) Notwithstanding subparagraph (A), an existing conduit*
7 *hydroelectric facility, as defined by Section 823a of Title 16 of*
8 *the United States Code, of 30 megawatts or less, shall be eligible*
9 *for the purposes of satisfying a retail seller's baseline quantity of*
10 *eligible renewable energy resources. A new conduit*
11 *hydroelectric facility, as defined by Section 823a of Title 16 of*
12 *the United States Code, of 30 megawatts or less, shall be an*
13 *eligible renewable energy resource so long as it does not require*
14 *a new or increased appropriation or diversion of water under*
15 *Part 2 (commencing with Section 1200) of Division 2 of the*
16 *Water Code.*

17 ~~(4)–~~

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

25 *(4) Notwithstanding paragraph (1), any geothermal electricity*
26 *included in the baseline of a retail seller from a facility under a*
27 *long-term contract executed before January 1, 2004, shall be*
28 *eligible to satisfy the annual procurement targets of any retail*
29 *seller upon the expiration of that contract. This paragraph shall*
30 *become inoperative on January 1, 2010, unless a later enacted*
31 *statute deletes or extends that date.*

32 (b) “Energy Commission” means the State Energy Resources
33 Conservation and Development Commission.

34 (c) “Retail seller” means an entity engaged in the retail sale of
35 electricity to end-use customers *located within the state,*
36 including any of the following:

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

38 (2) A community choice aggregator. The commission shall
39 institute a rulemaking to determine the manner in which a
40 community choice aggregator will participate in the renewables

1 portfolio standard subject to the same terms and conditions
2 applicable to an electrical corporation.

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

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

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

15 (C) The commission shall institute a rulemaking to determine
16 the manner in which electric service providers will participate in
17 the renewables portfolio standard *program*. The electric service
18 provider shall be subject to the same terms and conditions
19 applicable to an electrical corporation pursuant to this article.
20 Nothing in this paragraph shall impair a contract entered into
21 between an electric service provider and a retail customer prior to
22 the suspension of direct access by the commission pursuant to
23 Section 80110 of the Water Code.

24 (4) “Retail seller” does not include any of the following:

25 (A) A corporation or person employing cogeneration
26 technology or producing ~~power~~ *electricity* consistent with
27 subdivision (b) of Section 218.

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

31 (C) A local publicly owned ~~electrical~~ *electric* utility as defined
32 in subdivision (d) of Section 9604.

33 (d) “Renewables portfolio standard” means the specified
34 percentage of electricity generated by eligible renewable energy
35 resources that a retail seller is required to procure pursuant to
36 ~~Sections 399.13 and 399.15~~ *this article*.

37 (e) (1) “Renewable energy credit” means a certificate of
38 proof, issued through the accounting system established by the
39 Energy Commission pursuant to Section 399.13, that one unit of

1 *electricity was generated by an eligible renewable energy*
2 *resource.*

3 (2) “Renewable energy credit” includes all renewable and
4 environmental attributes associated with the production of
5 electricity from the eligible renewable energy resource, except
6 for an emissions reduction credit issued pursuant to Section
7 40709 of the Health and Safety Code.

8 (3) No electricity generated by an eligible renewable energy
9 resource attributable to the use of nonrenewable fuels, beyond a
10 *de minimus* quantity, as determined by the Energy Commission,
11 shall result in the creation of a renewable energy credit.

12 (4) A renewable energy credit shall not be eligible to satisfy
13 annual procurement targets established pursuant to this article,
14 unless the original unit of electricity was delivered to a retail
15 seller, the Independent System Operator, or to a local publicly
16 owned electric utility in compliance with subdivision (e) of
17 Section 399.13.

18 SEC. 11. Section 399.13 of the Public Utilities Code is
19 amended to read:

20 399.13. The Energy Commission shall do all of the following:

21 (a) Certify eligible renewable energy resources that it
22 determines meet the criteria described in subdivision (a) of
23 Section 399.12.

24 (b) Design and implement an accounting system to verify
25 compliance with the renewables portfolio standard by retail
26 sellers, to ensure that *electricity generated by an eligible*
27 *renewable energy-output resource* is counted only once for the
28 purpose of meeting the renewables portfolio standard of this state
29 or any other state, ~~and for verifying to certify renewable energy~~
30 *credits produced by eligible renewable energy resources, and to*
31 *verify* retail product claims in this state or any other state. In
32 establishing the guidelines governing this *accounting* system, the
33 Energy Commission shall collect data from electricity market
34 participants that it deems necessary to verify compliance of retail
35 sellers, in accordance with the requirements of this article and the
36 California Public Records Act (Chapter 3.5 (commencing with
37 Section 6250) of Division 7 of Title 1 of the Government Code).
38 In seeking data from electrical corporations, the Energy
39 Commission shall request data from the commission. The
40 commission shall collect data from electrical corporations and

1 remit the data to the Energy Commission within 90 days of the
2 request.

3 *(c) Establish a system for tracking and verifying renewable*
4 *energy credits that, through the use of independently audited*
5 *data, verifies the generation of electricity associated with each*
6 *renewable energy credit and protects against multiple counting*
7 *of the same renewable energy credit. The Energy Commission*
8 *shall consult with other western states and with the Western*
9 *Electricity Coordinating Council in the development of this*
10 *system.*

11 ~~(e)–~~

12 *(d) Allocate and award supplemental energy payments*
13 *pursuant to Chapter 8.6 (commencing with Section 25740) of*
14 *Division 15 of the Public Resources Code, to eligible renewable*
15 *energy resources to cover above-market costs of renewable*
16 *energy. A project may receive supplemental energy payments*
17 *only if it is selected by an electrical corporation pursuant to a*
18 *competitive solicitation that is found by the commission to*
19 *comply with the California Renewables Portfolio Standard*
20 *Program under this article and that has entered into an*
21 *electricity purchase agreement resulting from that solicitation*
22 *that is approved by the commission. A project selected for an*
23 *electricity purchase agreement by another retail seller may*
24 *receive supplemental energy payments if the retail seller*
25 *demonstrates to the commission that the selection of the project*
26 *is consistent with the results of a least-cost and best-fit process,*
27 *and that the supplemental energy payments are reasonable in*
28 *comparison to those paid under similar contracts with other*
29 *retail sellers. The Energy Commission shall not award*
30 *supplemental energy payments for the sale or purchase of*
31 *renewable energy credits.*

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

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

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

7 (f) *The Energy Commission shall not certify or award*
8 *tradeable renewable energy credits for electricity generated*
9 *pursuant to any electricity purchase contract with a retail seller*
10 *executed before January 1, 2005, unless the contract contains*
11 *explicit terms and conditions specifying the ownership or*
12 *disposition of those credits. Deliveries under those contracts*
13 *shall be tracked through the accounting system described in*
14 *subdivision (b) and included in the baseline quantity of eligible*
15 *renewable energy resources of the purchasing retail seller*
16 *pursuant to Section 399.15.*

17 (g) *The Energy Commission shall not certify or award*
18 *tradeable renewable energy credits for electricity generated*
19 *under any electricity purchase contract executed after January 1,*
20 *2005, pursuant to the federal Public Utility Regulatory Policies*
21 *Act of 1978 (16 U.S.C. Sec. 2601 et seq.). Deliveries under the*
22 *electricity purchase contracts shall be tracked through the*
23 *accounting system described in subdivision (b) and count*
24 *towards the renewables portfolio standard obligations of the*
25 *purchasing retail seller.*

26 SEC. 12. *Section 399.14 of the Public Utilities Code is*
27 *amended to read:*

28 399.14. (a) (1) *The commission shall direct each electrical*
29 *corporation to prepare a renewable energy procurement—plans*
30 *plan as described in paragraph (3) to satisfy its obligations under*
31 *the renewables portfolio standard. To the extent feasible, this*
32 *procurement plan shall be proposed, reviewed, and adopted by*
33 *the commission as part of, and pursuant to, a general*
34 *procurement plan process. The commission shall require each*
35 *electrical corporation to review and update its renewable energy*
36 *procurement plan as it determines to be necessary.*

37 ~~(1) (A) The commission shall not require an electrical~~
38 ~~corporation to conduct procurement to fulfill the renewables~~
39 ~~portfolio standard until the commission determines either of the~~
40 ~~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~~ 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 *electricity generated by eligible* renewable energy resources, 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 *eligible* renewable energy 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

1 needed transmission investments and ongoing utility expenses
2 resulting from integrating and operating eligible renewable
3 energy resources.

4 (C) Flexible rules for ~~compliance~~~~including~~~~compliance,~~
5 ~~including, but not limited to,~~ both of the following:

6 (i) Rules permitting electrical corporations to apply excess
7 procurement in one year to subsequent years or inadequate
8 procurement in one year to no more than the following three
9 years.

10 (ii) Rules permitting electrical corporations to purchase
11 renewable energy credits from an eligible renewable energy
12 resource pursuant to a contract of at least 10 years duration,
13 under the condition that the electricity generated by the eligible
14 renewable energy resource is sold into the California electricity
15 market and no feasible or cost-effective transmission facilities
16 exist to deliver the electricity to the electrical corporation's
17 service territory.

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

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

35 (A) An assessment of annual or multiyear portfolio supplies
36 and demand to determine the optimal mix of renewable
37 generation resources with deliverability characteristics that may
38 include peaking, dispatchable, baseload, firm, and as-available
39 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 *energy* 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 *energy* 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~~ the contracts or conduct a new solicitation.

(d) If an electrical corporation fails to comply with a commission order adopting a renewable *energy* procurement plan, the commission shall exercise its authority pursuant to Section 2113 to require compliance. *The commission shall enforce comparable penalties on any other retail seller that fails to meet annual procurement targets established pursuant to Section 399.15.*

(e) Upon application by ~~an electrical corporation~~ a retail seller, the commission may authorize ~~another~~ a procurement entity to enter into contracts on behalf of customers of the ~~electrical corporation~~ retail seller for deliveries of eligible

1 renewable energy resources to satisfy the annual *renewables*
2 portfolio standard obligations, subject to similar terms and
3 conditions applicable to ~~an electrical corporation~~ *a retail seller*.
4 The commission shall allow the procurement entity to recover
5 reasonable costs through retail rates subject to review and
6 approval.

7 (f) Procurement and administrative costs associated with
8 long-term contracts entered into by an electrical corporation for
9 eligible renewable energy resources pursuant to this article, at or
10 below the market price determined by the commission pursuant
11 to subdivision (c) of Section 399.15, shall be deemed reasonable
12 per se, and shall be recoverable in rates.

13 (g) *The commission shall prohibit a retail seller from using*
14 *renewable energy credits to satisfy annual renewable energy*
15 *procurement targets until the Energy Commission certifies that*
16 *the tracking and verification system established pursuant to*
17 *subdivision (c) of Section 399.13 is in operation and capable of*
18 *tracking renewable energy credits.*

19 ~~(g)~~

20 (h) For purposes of this article, “procure” means that a ~~utility~~
21 ~~retail seller~~ may acquire the ~~renewable output of electric~~
22 ~~generation facilities~~ *electricity generated by an eligible*
23 *renewable energy resource* that it owns or for which it has
24 contracted. Nothing in this article is intended to imply that the
25 purchase of electricity from third parties in a wholesale
26 transaction is the preferred method of fulfilling a retail seller’s
27 obligation to comply with this article.

28 ~~(h)~~

29 (i) Construction, alteration, demolition, installation, and repair
30 work on an eligible renewable energy resource that receives
31 production incentives or supplemental energy payments pursuant
32 to Sections 25742 and 25743 of the Public Resources Code,
33 including, ~~but not limited to,~~ work performed to qualify, receive,
34 or maintain production incentives or supplemental energy
35 payments is “public works” for the purposes of Chapter 1
36 (commencing with Section 1720) of Part 7 of Division 2 of the
37 Labor Code.

38 *SEC. 13. Section 399.15 of the Public Utilities Code is*
39 *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~~ 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 Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, consistent with this article, for above-market costs. 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~~ *retail seller* as follows:

(1) Beginning on January 1, 2003, each ~~electrical corporation~~ *retail seller* 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

1 its retail sales are procured from eligible renewable energy
2 resources no later than December 31, ~~2017. An electrical~~
3 ~~corporation with 20 percent of retail sales procured from eligible~~
4 ~~renewable energy resources in any year shall not be required to~~
5 ~~increase its procurement of such resources in the following year~~
6 ~~2010.~~

7 (2) *For purposes of setting annual procurement targets, the*
8 *commission shall establish an initial baseline for each electrical*
9 *corporation based on the actual percentage of retail sales*
10 *procured from eligible renewable energy resources in 2001, and,*
11 *to the extent applicable, adjusted going forward pursuant to*
12 *subdivision (a) of Section 399.12. The commission shall establish*
13 *baselines and set annual procurement targets for other retail*
14 *sellers that ensure that the departure of customer loads from*
15 *bundled service by an electrical corporation do not cause any*
16 *reduction in the quantity of eligible renewable energy resources*
17 *that would have otherwise been procured by the electrical*
18 *corporation to serve those customers.*

19 (3) Only for purposes of establishing these targets, the
20 commission shall include all ~~power~~ *electricity* sold to retail
21 customers by the Department of Water Resources pursuant to
22 Section 80100 of the Water Code in the calculation of retail sales
23 by an electrical corporation.

24 ~~(3)~~

25 (4) ~~In the event that an electrical corporation~~ *a retail seller*
26 *fails to procure sufficient eligible renewable energy resources in*
27 *a given year to meet any annual target established pursuant to*
28 *this subdivision, the ~~electrical corporation~~ retail seller shall*
29 *procure additional eligible renewable energy resources in*
30 *subsequent years to compensate for the shortfall if sufficient*
31 *funds are made available pursuant to ~~paragraph (2), and~~ Section*
32 *399.6 and Chapter 8.6 (commencing with Section 25740) of*
33 *Division 15 of the Public Resources Code, to cover the*
34 *above-market costs of eligible ~~renewables~~ renewable energy*
35 *resources.*

36 ~~(4)~~

37 (5) If supplemental energy payments from the Energy
38 Commission, in combination with the market prices approved by
39 the commission, are insufficient to cover the above-market costs
40 of eligible renewable energy resources, the commission shall

~~allow an electrical corporation~~ *a retail seller* to limit its annual procurement obligation to the quantity of eligible renewable energy resources that can be procured with available supplemental energy payments. *A retail seller shall not be required to enter into long-term contracts with operators of eligible renewable energy resources that exceed the market prices established pursuant to subdivision (c).*

(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~~ electricity.

(d) *The Energy Commission shall provide supplemental energy payments from funds in the New Renewable Resources Account of 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. Indirect costs associated with the purchase of eligible renewable energy resources by an electrical corporation, including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades, shall not be eligible for supplemental energy payments, but are recoverable in rates, as authorized by the commission. The Energy Commission shall not award supplemental energy payments for the sale or purchase of renewable energy credits or to service load that is not subject to the renewable energy public goods charge.*

(e) 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)~~

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

4 (g) *The commission shall establish rules that authorize the use*
5 *of renewable energy credits to satisfy annual procurement*
6 *targets. At a minimum, the rules shall do all of the following:*

7 (1) *Prohibit a renewable energy credit from being counted*
8 *more than once by any retail seller for compliance with the*
9 *renewables portfolio standard of this state or any other state, or*
10 *for verifying retail product claims in this state or any other state.*

11 (2) *Ensure that any revenues received by an electrical*
12 *corporation for the sale of renewable energy credits are credited*
13 *to ratepayers.*

14 (3) *Limit the quantity of renewable energy credits that can be*
15 *procured unbundled from electricity generation to meet the*
16 *annual procurement targets of a retail seller.*

17 (4) *Require every retail seller to demonstrate that all*
18 *purchased renewable energy credits are certified by the Energy*
19 *Commission and comply with the requirements of this article.*

20 (5) *Ensure that no retail seller shall be obligated to procure*
21 *renewable energy credits to satisfy annual procurement targets*
22 *in the event that supplemental energy payments, in combination*
23 *with the market prices approved by the commission, are*
24 *insufficient to cover the above-market costs of long-term*
25 *contracts with eligible renewable energy resources.*

26 (6) *Prohibit an electrical corporation from selling renewable*
27 *energy credits associated with eligible renewable energy*
28 *resources included in that electrical corporation's baseline*
29 *quantity on January 1, 2004.*

30 (7) *Prohibit sales of renewable energy credits by an electrical*
31 *corporation during any year in which the electrical corporation*
32 *utilizes flexible compliance rules to permit inadequate*
33 *procurement pursuant to subparagraph (C) of paragraph (2) of*
34 *subdivision (a) of Section 399.14.*

35 SEC. 14. *Section 399.16 of the Public Utilities Code is*
36 *amended to read:*

37 399.16. The Energy Commission may consider an electric
38 generating facility that is located outside the state to be an
39 eligible renewable energy resource if ~~it~~ the facility meets the

1 criteria described in Section 399.12 and all of the following
2 requirements:

3 (a) ~~It is located so that it is, or will be,~~ connected to the
4 ~~transmission network within the~~ Western Electricity
5 Coordinating Council (WECC) ~~transmission system service~~
6 ~~territory.~~

7 (b) ~~It is developed with guaranteed contracts to sell its~~
8 ~~generation commences initial commercial operation after~~
9 ~~January 1, 2005, supplies electricity under a guaranteed contract~~
10 ~~with a retail seller, and demonstrates delivery of energy, to a the~~
11 ~~contracted amount of electricity to that retail seller or the~~
12 ~~Independent System Operator.~~

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

17 ~~SEC. 13.~~

18 *SEC. 15.* Section 399.17 is added to the Public Utilities Code,
19 to read:

20 399.17. (a) Subject to the provisions of this section, the
21 requirements of this article apply to an electrical corporation with
22 60,000 or fewer customer accounts in California that serves retail
23 end-use customers outside California.

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

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

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

38 (3) The Energy Commission verifies that the electricity
39 generated by the facility is eligible to meet the annual
40 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. 16. Article 9 (commencing with Section 635) is added to Chapter 3 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 9. Long-Term Plans and Procurement Plans

635. In a long-term plan adopted by an electrical corporation or in a procurement plan implemented by a local publicly owned electric utility, the electrical corporation or local publicly owned electric utility shall adopt a strategy applicable both to newly constructed or repowered generation owned and procured by the electrical corporation or local publicly owned electric utility to achieve efficiency in the use of fossil fuels and to address carbon emissions consistent with the loading order approved by the commission, or for a local publicly owned electric utility, a

1 functionally equivalent order by its governing body, the State
2 Energy Resources Conservation and Development Commission,
3 and the California Consumer Power and Conservation Financing
4 Authority.

5 ~~SEC. 15.~~

6 *SEC. 17.* The State Energy Resources Conservation and
7 Development Commission shall, on or before January 1, 2007,
8 report to the Governor and the Legislature with recommendations
9 for how to incentivize each local publicly owned electric utility,
10 as defined in Section 9604 of the Public Utilities Code, to
11 implement and enforce a renewables portfolio standard program
12 meeting the requirements of Section 399.15 of the Public
13 Utilities Code, utilizing eligible renewable energy resources, as
14 defined in Section 399.12. The commission may include the
15 report as a component of the 2005 Integrated Energy Policy or
16 the next renewable energy report required pursuant to Section
17 25758 of the Public Resources Code. The commission shall use
18 existing resources to comply with this section.

19 ~~SEC. 16.~~

20 *SEC. 18.* No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution for
22 certain costs that may be incurred by a local agency or school
23 district because, in that regard, this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the
25 penalty for a crime or infraction, within the meaning of Section
26 17556 of the Government Code, or changes the definition of a
27 crime within the meaning of Section 6 of Article XIII B of the
28 California Constitution.

29 However, if the Commission on State Mandates determines
30 that this act contains other costs mandated by the state,
31 reimbursement to local agencies and school districts for those
32 costs shall be made pursuant to Part 7 (commencing with Section
33 17500) of Division 4 of Title 2 of the Government Code.