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AMENDED IN ASSEMBLY MAY 6, 2014

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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2363

Introduced by Assembly Member Dahle
(Principal coauthor: Assembly Member Alejo)
(Coauthors: Assembly Members *Bonilla*, *Bradford*, *Jones*, and
***Patterson*)**
(Coauthor: Senator Galgiani)

February 21, 2014

An act to amend Sections 399.13 and 454.5 of the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2363, as amended, Dahle. Electricity procurement.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined, while local publicly owned electric utilities, as defined, are under the direction of their governing board. The Public Utilities Act imposes various duties and responsibilities on the Public Utilities Commission with respect to the purchase of electricity and requires the commission 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 Public Utilities Act requires the Public Utilities Commission to review and adopt an overall procurement plan for each electrical corporation to meet electricity demand for its customers in accordance

with specified elements, incentive mechanisms, and objectives. The act requires the Public Utilities Commission to review and accept, modify, or reject each electrical corporation's procurement plan and requires that each approved procurement plan accomplish specified objectives.

This bill would require the Public Utilities Commission to direct electrical corporations to include in their proposed procurement plans ~~the use of any nonzero integration cost adders,~~ *costs of integrating an eligible renewable energy resource*, as specified.

(2) The California Renewables Portfolio Standard Program requires a retail seller, as defined, and local publicly owned electric utilities to purchase specified minimum quantities of electricity products from eligible renewable energy resources, as defined, for specified compliance periods. The program, consistent with the goals of procuring the least-cost and best-fit eligible renewable energy resources that meet project viability principles, requires that all retail sellers procure a balanced portfolio of electricity products from eligible renewable energy resources, as specified, referred to as the portfolio content requirements. The program requires the commission to adopt, by rulemaking, a process that provides criteria for the rank ordering and selecting of least-cost and best-fit eligible renewable energy resources to comply with the program obligations on a total cost basis, taking into account specified matter.

This bill additionally would require the commission to adopt, by rulemaking, by October 1, 2015, ~~a nonzero integration cost adder methodology that reflects a reasonable estimate of~~ *for determining the costs of procuring capacity and energy required to accommodate the electrical generation of the particular integrating an eligible renewable energy resource.*

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) California is leading the world in adopting comprehensive
- 4 programs that reduce emissions of greenhouse gases, including
- 5 passage of the California Global Warming Solutions Act of 2006
- 6 (Division 25.5 (commencing with Section 38500) of the Health
- 7 and Safety Code) and the California Renewables Portfolio Standard

1 Program (Article 16 (commencing with Section 399.11) of Chapter
2 2.3 of Part 1 of Division 1 of the Public Utilities Code).

3 (b) The state has an abundant supply of renewable energy
4 resources, including geothermal, biomass, biomethane, wind, and
5 solar, that has contributed to the state's ability to reduce its
6 emissions of greenhouse gases and meet its renewables portfolio
7 standard procurement targets.

8 (c) It is in the public's interest that the state continue to promote
9 policies to ensure eligible renewable energy resources be procured
10 and contributed to the state's ability to reduce its greenhouse gas
11 emissions and meet the targets of the California Renewables
12 Portfolio Standard Program (Article 16 (commencing with Section
13 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities
14 Code).

15 (d) There are eligible renewable energy resources in the state
16 that, if developed and retained, would not require additional
17 capacity to maintain the reliability of the bulk electrical system
18 and could generate during periods in which electricity is likely to
19 be the most valuable, prospectively.

20 (e) Procuring and retaining a diversified portfolio of eligible
21 renewable energy resources may do all of the following:

22 (1) Assist electrical corporations in satisfying renewable energy
23 procurement and greenhouse-gases *gas* emissions reductions goals
24 in a cost-effective manner.

25 (2) Partially meet peak load requirements with electricity
26 generated by eligible renewable energy resources, which will have
27 substantial benefits from reduced emissions of greenhouse gases,
28 and cobenefits from reduced emissions of criteria pollutants.

29 (3) Maintain the reliability of the electrical grid to meet demand
30 for electricity on a 24-hour basis.

31 (4) Contribute to local employment and economic growth
32 throughout the state.

33 SEC. 2. Section 399.13 of the Public Utilities Code is amended
34 to read:

35 399.13. (a) (1) The commission shall direct each electrical
36 corporation to annually prepare a renewable energy procurement
37 plan that includes the matter in paragraph (5), to satisfy its
38 obligations under the renewables portfolio standard. To the extent
39 feasible, this procurement plan shall be proposed, reviewed, and
40 adopted by the commission as part of, and pursuant to, a general

1 procurement plan process. The commission shall require each
2 electrical corporation to review and update its renewable energy
3 procurement plan as it determines to be necessary.

4 (2) Every electrical corporation that owns electrical transmission
5 facilities shall annually prepare, as part of the Federal Energy
6 Regulatory Commission Order 890 process, and submit to the
7 commission, a report identifying any electrical transmission
8 facility, upgrade, or enhancement that is reasonably necessary to
9 achieve the renewables portfolio standard procurement
10 requirements of this article. Each report shall look forward at least
11 five years and, to ensure that adequate investments are made in a
12 timely manner, shall include a preliminary schedule when an
13 application for a certificate of public convenience and necessity
14 will be made, pursuant to Chapter 5 (commencing with Section
15 1001), for any electrical transmission facility identified as being
16 reasonably necessary to achieve the renewable energy resources
17 procurement requirements of this article. Each electrical
18 corporation that owns electrical transmission facilities shall ensure
19 that project-specific interconnection studies are completed in a
20 timely manner.

21 (3) The commission shall direct each retail seller to prepare and
22 submit an annual compliance report that includes all of the
23 following:

24 (A) The current status and progress made during the prior year
25 toward procurement of eligible renewable energy resources as a
26 percentage of retail sales, including, if applicable, the status of any
27 necessary siting and permitting approvals from federal, state, and
28 local agencies for those eligible renewable energy resources
29 procured by the retail seller, and the current status of compliance
30 with the portfolio content requirements of subdivision (c) of
31 Section 399.16, including procurement of eligible renewable energy
32 resources located outside the state and within the WECC and
33 unbundled renewable energy credits.

34 (B) If the retail seller is an electrical corporation, the current
35 status and progress made during the prior year toward construction
36 of, and upgrades to, transmission and distribution facilities and
37 other electrical system components it owns to interconnect eligible
38 renewable energy resources and to supply the electricity generated
39 by those resources to load, including the status of planning, siting,

1 and permitting transmission facilities by federal, state, and local
2 agencies.

3 (C) Recommendations to remove impediments to making
4 progress toward achieving the renewable energy resources
5 procurement requirements established pursuant to this article.

6 (4) The commission shall adopt, by rulemaking, all of the
7 following:

8 (A) A process that provides criteria for the rank ordering and
9 selection of least-cost and best-fit eligible renewable energy
10 resources to comply with the California Renewables Portfolio
11 Standard Program obligations on a total cost basis. This process
12 shall take into account all of the following:

13 (i) Estimates of indirect costs associated with needed
14 ~~transmission investments and ongoing electrical corporation~~
15 ~~expenses resulting from integrating and operating eligible~~
16 ~~renewable energy resources.~~ *investments.*

17 (ii) The cost impact of procuring the eligible renewable energy
18 resources on the electrical corporation's electricity portfolio.

19 (iii) The viability of the project to construct and reliably operate
20 the eligible renewable energy resource, including the developer's
21 experience, the feasibility of the technology used to generate
22 electricity, and the risk that the facility will not be built, or that
23 construction will be delayed, with the result that electricity will
24 not be supplied as required by the contract.

25 (iv) Workforce recruitment, training, and retention efforts,
26 including the employment growth associated with the construction
27 and operation of eligible renewable energy resources and goals
28 for recruitment and training of women, minorities, and disabled
29 veterans.

30 ~~(v) A nonzero integration cost adder methodology, to be initially~~
31 ~~determined by the commission no later than October 1, 2015, that~~
32 ~~reflects a reasonable estimate of the costs of procuring capacity~~
33 ~~and energy required to accommodate the electrical generation of~~
34 ~~the particular eligible renewable energy resource.~~

35 (v) (I) *Estimates of ongoing electrical corporation expenses*
36 *resulting from integrating and operating eligible renewable energy*
37 *resources, including, but not limited to, any additional wholesale*
38 *energy and capacity costs associated with integrating each eligible*
39 *renewable resource.*

1 (II) No later than October 1, 2015, the commission shall approve
2 a methodology for determining the integration costs described in
3 subclause (I).

4 (B) Rules permitting retail sellers to accumulate, beginning
5 January 1, 2011, excess procurement in one compliance period to
6 be applied to any subsequent compliance period. The rules shall
7 apply equally to all retail sellers. In determining the quantity of
8 excess procurement for the applicable compliance period, the
9 commission shall deduct from actual procurement quantities the
10 total amount of procurement associated with contracts of less than
11 10 years in duration. In no event shall electricity products meeting
12 the portfolio content of paragraph (3) of subdivision (b) of Section
13 399.16 be counted as excess procurement.

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

26 (D) An appropriate minimum margin of procurement above the
27 minimum procurement level necessary to comply with the
28 renewables portfolio standard to mitigate the risk that renewable
29 projects planned or under contract are delayed or canceled. This
30 paragraph does not preclude an electrical corporation from
31 voluntarily proposing a margin of procurement above the
32 appropriate minimum margin established by the commission.

33 (5) Consistent with the goal of increasing California's reliance
34 on eligible renewable energy resources, the renewable energy
35 procurement plan submitted by an electrical corporation shall
36 include all of the following:

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

1 (B) Potential compliance delays related to the conditions
2 described in paragraph (5) of subdivision (b) of Section 399.15.

3 (C) A bid solicitation setting forth the need for eligible
4 renewable energy resources of each deliverability characteristic,
5 required online dates, and locational preferences, if any.

6 (D) A status update on the development schedule of all eligible
7 renewable energy resources currently under contract.

8 (E) Consideration of mechanisms for price adjustments
9 associated with the costs of key components for eligible renewable
10 energy resource projects with online dates more than 24 months
11 after the date of contract execution.

12 (F) An assessment of the risk that an eligible renewable energy
13 resource will not be built, or that construction will be delayed,
14 with the result that electricity will not be delivered as required by
15 the contract.

16 (6) In soliciting and procuring eligible renewable energy
17 resources, each electrical corporation shall offer contracts of no
18 less than 10 years duration, unless the commission approves of a
19 contract of shorter duration.

20 (7) In soliciting and procuring eligible renewable energy
21 resources for California-based projects, each electrical corporation
22 shall give preference to renewable energy projects that provide
23 environmental and economic benefits to communities afflicted
24 with poverty or high unemployment, or that suffer from high
25 emission levels of toxic air contaminants, criteria air pollutants,
26 and greenhouse gases.

27 (b) A retail seller may enter into a combination of long- and
28 short-term contracts for electricity and associated renewable energy
29 credits. The commission may authorize a retail seller to enter into
30 a contract of less than 10 years' duration with an eligible renewable
31 energy resource, if the commission has established, for each retail
32 seller, minimum quantities of eligible renewable energy resources
33 to be procured through contracts of at least 10 years' duration.

34 (c) The commission shall review and accept, modify, or reject
35 each electrical corporation's renewable energy resource
36 procurement plan prior to the commencement of renewable energy
37 procurement pursuant to this article by an electrical corporation.

38 (d) Unless previously preapproved by the commission, an
39 electrical corporation shall submit a contract for the generation of
40 an eligible renewable energy resource to the commission for review

1 and approval consistent with an approved renewable energy
 2 resource procurement plan. If the commission determines that the
 3 bid prices are elevated due to a lack of effective competition among
 4 the bidders, the commission shall direct the electrical corporation
 5 to renegotiate the contracts or conduct a new solicitation.

6 (e) If an electrical corporation fails to comply with a commission
 7 order adopting a renewable energy resource procurement plan, the
 8 commission shall exercise its authority pursuant to Section 2113
 9 to require compliance. The commission shall enforce comparable
 10 penalties on any retail seller that is not an electrical corporation
 11 that fails to meet the procurement targets established pursuant to
 12 Section 399.15.

13 (f) (1) The commission may authorize a procurement entity to
 14 enter into contracts on behalf of customers of a retail seller for
 15 electricity products from eligible renewable energy resources to
 16 satisfy the retail seller’s renewables portfolio standard procurement
 17 requirements. The commission shall not require any person or
 18 corporation to act as a procurement entity or require any party to
 19 purchase eligible renewable energy resources from a procurement
 20 entity.

21 (2) Subject to review and approval by the commission, the
 22 procurement entity shall be permitted to recover reasonable
 23 administrative and procurement costs through the retail rates of
 24 end-use customers that are served by the procurement entity and
 25 are directly benefiting from the procurement of eligible renewable
 26 energy resources.

27 (g) Procurement and administrative costs associated with
 28 contracts entered into by an electrical corporation for eligible
 29 renewable energy resources pursuant to this article and approved
 30 by the commission are reasonable and prudent and shall be
 31 recoverable in rates.

32 (h) Construction, alteration, demolition, installation, and repair
 33 work on an eligible renewable energy resource that receives
 34 production incentives pursuant to Section 25742 of the Public
 35 Resources Code, including work performed to qualify, receive, or
 36 maintain production incentives, are “public works” for the purposes
 37 of Chapter 1 (commencing with Section 1720) of Part 7 of Division
 38 2 of the Labor Code.

39 SEC. 3. Section 454.5 of the Public Utilities Code is amended
 40 to read:

1 454.5. (a) The commission shall specify the allocation of
2 electricity, including quantity, characteristics, and duration of
3 electricity delivery, that the Department of Water Resources shall
4 provide under its power purchase agreements to the customers of
5 each electrical corporation, which shall be reflected in the electrical
6 corporation's proposed procurement plan. Each electrical
7 corporation shall file a proposed procurement plan with the
8 commission not later than 60 days after the commission specifies
9 the allocation of electricity. The proposed procurement plan shall
10 specify the date that the electrical corporation intends to resume
11 procurement of electricity for its retail customers, consistent with
12 its obligation to serve. After the commission's adoption of a
13 procurement plan, the commission shall allow not less than 60
14 days before the electrical corporation resumes procurement
15 pursuant to this section.

16 (b) An electrical corporation's proposed procurement plan shall
17 include, but not be limited to, all of the following:

18 (1) An assessment of the price risk associated with the electrical
19 corporation's portfolio, including any utility-retained generation,
20 existing power purchase and exchange contracts, and proposed
21 contracts or purchases under which an electrical corporation will
22 procure electricity, electricity demand reductions, and
23 electricity-related products and the remaining open position to be
24 served by spot market transactions.

25 (2) A definition of each electricity product, electricity-related
26 product, and procurement related financial product, including
27 support and justification for the product type and amount to be
28 procured under the plan.

29 (3) The duration of the plan.

30 (4) The duration, timing, and range of quantities of each product
31 to be procured.

32 (5) A competitive procurement process under which the
33 electrical corporation may request bids for procurement-related
34 services, including the format and criteria of that procurement
35 process.

36 (6) An incentive mechanism, if any incentive mechanism is
37 proposed, including the type of transactions to be covered by that
38 mechanism, their respective procurement benchmarks, and other
39 parameters needed to determine the sharing of risks and benefits.

1 (7) The upfront standards and criteria by which the acceptability
2 and eligibility for rate recovery of a proposed procurement
3 transaction will be known by the electrical corporation prior to
4 execution of the transaction. This shall include an expedited
5 approval process for the commission's review of proposed contracts
6 and subsequent approval or rejection thereof. The electrical
7 corporation shall propose alternative procurement choices in the
8 event a contract is rejected.

9 (8) Procedures for updating the procurement plan.

10 (9) A showing that the procurement plan will achieve the
11 following:

12 (A) The electrical corporation, in order to fulfill its unmet
13 resource needs, shall procure resources from eligible renewable
14 energy resources in an amount sufficient to meet its procurement
15 requirements pursuant to the California Renewables Portfolio
16 Standard Program (Article 16 (commencing with Section 399.11)
17 of Chapter 2.3).

18 (B) The electrical corporation shall create or maintain a
19 diversified procurement portfolio consisting of both short-term
20 and long-term electricity and electricity-related and demand
21 reduction products.

22 (C) The electrical corporation shall first meet its unmet resource
23 needs through all available energy efficiency and demand reduction
24 resources that are cost effective, reliable, and feasible.

25 (10) The electrical corporation's risk management policy,
26 strategy, and practices, including specific measures of price
27 stability.

28 (11) A plan to achieve appropriate increases in diversity of
29 ownership and diversity of fuel supply of nonutility electrical
30 generation.

31 (12) A mechanism for recovery of reasonable administrative
32 costs related to procurement in the generation component of rates.

33 (c) The commission shall review and accept, modify, or reject
34 each electrical corporation's procurement plan. The commission's
35 review shall consider each electrical corporation's individual
36 procurement situation, and shall give strong consideration to that
37 situation in determining which one or more of the features set forth
38 in this subdivision shall apply to that electrical corporation. A
39 procurement plan approved by the commission shall contain one
40 or more of the following features, provided that the commission

1 may not approve a feature or mechanism for an electrical
2 corporation if it finds that the feature or mechanism would impair
3 the restoration of an electrical corporation's creditworthiness or
4 would lead to a deterioration of an electrical corporation's
5 creditworthiness:

6 (1) A competitive procurement process under which the
7 electrical corporation may request bids for procurement-related
8 services. The commission shall specify the format of that
9 procurement process, as well as criteria to ensure that the auction
10 process is open and adequately subscribed. Any purchases made
11 in compliance with the commission-authorized process shall be
12 recovered in the generation component of rates.

13 (2) An incentive mechanism that establishes a procurement
14 benchmark or benchmarks and authorizes the electrical corporation
15 to procure from the market, subject to comparing the electrical
16 corporation's performance to the commission-authorized
17 benchmark or benchmarks. The incentive mechanism shall be
18 clear, achievable, and contain quantifiable objectives and standards.
19 The incentive mechanism shall contain balanced risk and reward
20 incentives that limit the risk and reward of an electrical corporation.

21 (3) Upfront achievable standards and criteria by which the
22 acceptability and eligibility for rate recovery of a proposed
23 procurement transaction will be known by the electrical corporation
24 prior to the execution of the bilateral contract for the transaction.
25 The commission shall provide for expedited review and either
26 approve or reject the individual contracts submitted by the electrical
27 corporation to ensure compliance with its procurement plan. To
28 the extent the commission rejects a proposed contract pursuant to
29 this criteria, the commission shall designate alternative procurement
30 choices obtained in the procurement plan that will be recoverable
31 for ratemaking purposes.

32 (d) A procurement plan approved by the commission shall
33 accomplish each of the following objectives:

34 (1) Enable the electrical corporation to fulfill its obligation to
35 serve its customers at just and reasonable rates.

36 (2) Eliminate the need for after-the-fact reasonableness reviews
37 of an electrical corporation's actions in compliance with an
38 approved procurement plan, including resulting electricity
39 procurement contracts, practices, and related expenses. However,
40 the commission may establish a regulatory process to verify and

1 ensure that each contract was administered in accordance with the
2 terms of the contract, and contract disputes that may arise are
3 reasonably resolved.

4 (3) Ensure timely recovery of prospective procurement costs
5 incurred pursuant to an approved procurement plan. The
6 commission shall establish rates based on forecasts of procurement
7 costs adopted by the commission, actual procurement costs
8 incurred, or combination thereof, as determined by the commission.
9 The commission shall establish power procurement balancing
10 accounts to track the differences between recorded revenues and
11 costs incurred pursuant to an approved procurement plan. The
12 commission shall review the power procurement balancing
13 accounts, not less than semiannually, and shall adjust rates or order
14 refunds, as necessary, to promptly amortize a balancing account,
15 according to a schedule determined by the commission. Until
16 January 1, 2006, the commission shall ensure that any
17 overcollection or undercollection in the power procurement
18 balancing account does not exceed 5 percent of the electrical
19 corporation's actual recorded generation revenues for the prior
20 calendar year excluding revenues collected for the Department of
21 Water Resources. The commission shall determine the schedule
22 for amortizing the overcollection or undercollection in the
23 balancing account to ensure that the 5 percent threshold is not
24 exceeded. After January 1, 2006, this adjustment shall occur when
25 deemed appropriate by the commission consistent with the
26 objectives of this section.

27 (4) Moderate the price risk associated with serving its retail
28 customers, including the price risk embedded in its long-term
29 supply contracts, by authorizing an electrical corporation to enter
30 into financial and other electricity-related product contracts.

31 (5) Provide for just and reasonable rates, with an appropriate
32 balancing of price stability and price level in the electrical
33 corporation's procurement plan.

34 (e) The commission shall provide for the periodic review and
35 prospective modification of an electrical corporation's procurement
36 plan.

37 (f) The commission may engage an independent consultant or
38 advisory service to evaluate risk management and strategy. The
39 reasonable costs of any consultant or advisory service is a

1 reimbursable expense and eligible for funding pursuant to Section
2 631.

3 (g) The commission shall adopt appropriate procedures to ensure
4 the confidentiality of any market sensitive information submitted
5 in an electrical corporation's proposed procurement plan or
6 resulting from or related to its approved procurement plan,
7 including, but not limited to, proposed or executed power purchase
8 agreements, data request responses, or consultant reports, or any
9 combination, provided that the Office of Ratepayer Advocates and
10 other consumer groups that are nonmarket participants shall be
11 provided access to this information under confidentiality
12 procedures authorized by the commission.

13 (h) Nothing in this section alters, modifies, or amends the
14 commission's oversight of affiliate transactions under its rules and
15 decisions or the commission's existing authority to investigate and
16 penalize an electrical corporation's alleged fraudulent activities,
17 or to disallow costs incurred as a result of gross incompetence,
18 fraud, abuse, or similar grounds. Nothing in this section expands,
19 modifies, or limits the State Energy Resources Conservation and
20 Development Commission's existing authority and responsibilities
21 as set forth in Sections 25216, 25216.5, and 25323 of the Public
22 Resources Code.

23 (i) An electrical corporation that serves less than 500,000 electric
24 retail customers within the state may file with the commission a
25 request for exemption from this section, which the commission
26 shall grant upon a showing of good cause.

27 (j) (1) Prior to its approval pursuant to Section 851 of any
28 divestiture of generation assets owned by an electrical corporation
29 on or after the date of enactment of the act adding this section, the
30 commission shall determine the impact of the proposed divestiture
31 on the electrical corporation's procurement rates and shall approve
32 a divestiture only to the extent it finds, taking into account the
33 effect of the divestiture on procurement rates, that the divestiture
34 is in the public interest and will result in net ratepayer benefits.

35 (2) Any electrical corporation's procurement necessitated as a
36 result of the divestiture of generation assets on or after the effective
37 date of the act adding this subdivision shall be subject to the
38 mechanisms and procedures set forth in this section only if its
39 actual cost is less than the recent historical cost of the divested
40 generation assets.

1 (3) Notwithstanding paragraph (2), the commission may deem
2 proposed procurement eligible to use the procedures in this section
3 upon its approval of asset divestiture pursuant to Section 851.
4 (k) The commission shall direct electrical corporations to include
5 in their proposed procurement plans ~~the use of any nonzero~~
6 ~~integration-cost adders~~ *costs described and* determined pursuant
7 to clause (v) of subparagraph (A) of paragraph (4) of subdivision
8 (a) of Section 399.13.

O