

Senate Bill No. 14

Passed the Senate September 12, 2009

Secretary of the Senate

Passed the Assembly September 12, 2009

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 25740 and 25741 of, and to add Section 25741.5 to, the Public Resources Code, and to amend Sections 399.11, 399.12, and 399.17 of, to amend and renumber Sections 399.13 and 399.16 of, to add Sections 399.18, 399.30, and 399.31 to, to add Article 11 (commencing with Section 910) to Chapter 4 of Part 1 of Division 1 of, to repeal Section 387 of, and to repeal and add Section 399.15 of, the Public Utilities Code, relating to energy, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 14, Simitian. Utilities: renewable energy resources.

(1) Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations, as defined. Existing law requires the PUC to require the state's 3 largest electrical corporations, Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison, to identify a separate electrical 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. Existing PUC resolutions refer to the nonbypassable rate component as a "public goods charge." The public goods charge moneys 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.

The existing Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission (Energy Commission). Existing law establishes the Renewable Resource Trust Fund as a fund that is continuously appropriated, with certain exceptions for administrative expenses, in the State Treasury and requires that certain moneys collected to support renewable energy resources through the public goods charge are deposited into the fund and authorizes the Energy Commission to expend the moneys pursuant to the Renewable Energy Resources Program. The

program states the intent of the Legislature to increase the amount of electricity generated from eligible renewable energy resources per year so that amount equals at least 20% of total retail sales of electricity in California per year by December 31, 2010.

This bill would revise the Renewable Energy Resources Program to state the intent of the Legislature to increase the amount of electricity generated from eligible renewable energy resources per year, so that amount equals at least 33% of total retail sales of electricity in California per year by December 31, 2020. The bill would revise certain terms used in the program and revise certain eligibility criteria for a renewable electrical generation facility, as defined, pursuant to the program. The bill would require the Energy Commission, by May 31, 2010, to report to the Legislature whether out-of-state, run-of-river hydroelectric generating facilities should be considered renewable electric generating facilities, as defined.

(2) Existing law expresses the intent of the Legislature, in establishing the California Renewables Portfolio Standard Program (RPS program), to increase the amount of electricity generated per year from eligible renewable energy resources, as defined, to an amount that equals at least 20% of the total electricity sold to retail customers in California per year by December 31, 2010.

This bill would express the intent that the amount of electricity generated per year from eligible renewable energy resources be increased to an amount that equals at least 20% of the total electricity sold to retail customers in California per year by December 31, 2013, and 33% by December 31, 2020.

(3) The Public Utilities Act imposes various duties and responsibilities on the PUC with respect to the purchase of electricity and requires the PUC to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation, as defined, pursuant to the RPS program. The RPS 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 in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year. The RPS program requires the PUC to implement annual procurement targets for each retail seller to increase its total procurement of electricity generated by

eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales of electricity are procured from eligible renewable energy resources no later than December 31, 2010. Existing law requires the PUC to make a determination of the existing market cost for electricity, which PUC decisions call the market price referent, and to limit an electrical corporation's obligation to procure electricity from eligible renewable energy resources, that exceeds the market price referent, to an amount collected through the renewable energy public goods charge.

This bill would instead require the PUC to require that a retail seller procure the following percentages of electricity from eligible renewable energy resources by the following dates: (A) Until December 31, 2012, the same percentage as actually achieved by the retail seller during 2009; (B) 20% by December 31, 2013; (C) 25% by December 31, 2016; and (D) 33% by December 31, 2020. The bill would authorize the PUC to permit a retail seller to delay compliance with (B) or (C) procurement levels when specified circumstances are present, but would not authorize the PUC to permit a retail seller to delay compliance with the (D) procurement level. The bill would delete the existing market price referent provisions and instead require the PUC to establish a methodology to determine the market price of electricity for terms corresponding to the length of contracts with eligible renewable energy resources, in consideration of, and reflecting, certain matters. The bill would require the PUC to establish a limitation on the annual expenditures made above the market price, by an electrical corporation, in order to achieve the procurement levels established by the PUC. The bill would require the PUC to permit an electrical corporation to limit its procurement of electricity from eligible renewable energy resources to that quantity that can be procured at or below the market prices established by the PUC, up to the limitation. The bill would delete an existing requirement that the PUC adopt flexible rules for compliance for retail sellers.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the PUC is a crime.

Because the provisions of this bill are within the act and require action by the PUC to implement its requirements, a violation of

these provisions would impose a state-mandated local program by expanding the definition of a crime.

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

This bill would repeal this provision and instead make certain of the requirements of the RPS program, as discussed below, applicable to local publicly owned electric utilities. By placing additional requirements upon local publicly owned electric utilities, the bill would impose a state-mandated local program.

(5) Existing law requires the Energy Commission to certify eligible renewable energy resources, to design and implement an accounting system to verify compliance with the RPS requirements by retail sellers, and to develop tracking, accounting, verification, and enforcement mechanisms for renewable energy credits, as defined.

This bill would require the Energy Commission to design and implement an accounting system to verify compliance with the RPS requirements by retail sellers and local publicly owned electric utilities. The bill would require the Energy Commission, among other things, to adopt regulations specifying procedures for enforcement of the RPS requirements that include a public process under which the Energy Commission is authorized to issue a notice of violation and correction with respect to a local publicly owned electric utility and for referral to the State Air Resources Board for penalties imposed pursuant to the California Global Warming Solutions Act of 2006. The bill would require that the RPS established for a local publicly owned electric utility require it to procure the following percentages of electricity from eligible renewable energy resources by the following dates: (A) Until December 31, 2012, the same percentage as actually achieved by the utility during 2009; (B) 20% by December 31, 2013; (C) 25% by December 31, 2016; and (D) 33% by December 31, 2020. The bill would provide that the local publicly owned electric utility retains discretion with respect to certain matters in complying with the RPS, would require that certain notices be given by the utility

when adopting and periodically revising its procurement plan, and would require the utility to report certain information relative to RPS compliance to the Energy Commission and its customers.

(6) Existing law requires the PUC to prepare and submit to the Governor and the Legislature a written report annually before February 1 of each year on the costs of programs and activities conducted by an electrical corporation or gas corporation that have more than a specified number of customers in California.

The bill would require the PUC to prepare and submit to the policy and fiscal committees of the Legislature, annually before February 1 of each year, a report on (A) all electrical corporation revenue requirement increases associated with meeting the renewables portfolio standard, (B) all cost savings experienced, or costs avoided, by electrical corporations as a result of meeting the renewables portfolio standard, (C) all costs incurred by electrical corporations for incentives for distributed and renewable generation, (D) all cost savings experienced, or costs avoided, by electrical corporations as a result of incentives for distributed generation and renewable generation, (E) specified costs for which an electrical corporation is seeking recovery in rates that are pending determination or approval by the PUC, (F) the decision number of each PUC decision in the prior year authorizing an electrical corporation to recover costs incurred in rates, and (G) any changes in the prior year in load serviced by an electrical corporation.

(7) This bill would appropriate \$322,000 from the Public Utilities Commission Utilities Reimbursement Account to the PUC for additional staffing to identify, review, and approve transmission lines reasonably necessary or appropriate to facilitate achievement of the renewables portfolio standard.

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

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

Appropriation: yes.

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

SECTION 1. Section 25741 of the Public Resources Code is amended to read:

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

(a) “Delivered” and “delivery,” have the same meaning as defined in Section 399.12 of the Public Utilities Code.

(b) “Procurement entity” means any person or corporation that enters into an agreement with a retail seller to procure eligible renewable energy resources pursuant to subdivision (g) of Section 399.13 of the Public Utilities Code.

(c) “Renewable electrical generation facility” means a facility that meets all of the following criteria:

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

(2) The facility satisfies one of the following requirements:

(A) The facility is located in the state or near the border of the state with the first point of connection to the transmission network of an balancing authority area primarily located within the state.

(B) The facility has its first point of interconnection to the transmission network outside the state and satisfies all of the following requirements:

(i) It is connected to the transmission network within the Western Electricity Coordinating Council (WECC) service territory.

(ii) It commences initial commercial operation after January 1, 2010.

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

(iv) It participates in the accounting system to verify compliance with the renewables portfolio standard once established by the commission pursuant to subdivision (b) of Section 399.25 of the Public Utilities Code.

(C) The facility meets the requirements of clauses (i), (iii), and (iv) of subparagraph (B), but does not meet the requirements of

clause (ii) of subparagraph (B) because it commenced initial operation prior to January 1, 2010, if the facility satisfies either of the following requirements:

(i) The electricity is from incremental generation resulting from expansion or repowering of the facility.

(ii) Electricity generated by the facility was procured by a retail seller or local publicly owned electric utility as of May 31, 2009.

(3) Any existing landfill gas facility approved by a publicly owned electric utility prior to September 16, 2009, as a renewable electric generation facility shall continue to qualify as a renewable electric generation facility.

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

(d) “Municipal solid waste conversion,” as used in subdivision (c), means a technology that uses a noncombustion thermal process to convert solid waste to a clean-burning fuel for the purpose of generating electricity, and that meets all of the following criteria:

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

(B) The technology produces no discharges of air contaminants or emissions, including greenhouse gases as defined in Section 38505 of the Health and Safety Code.

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

(D) The technology produces no hazardous wastes.

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

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

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

(H) The facility certifies that any local agency sending solid waste to the facility diverted at least 30 percent of all solid waste it collects through solid waste reduction, recycling, and composting. For purposes of this paragraph, “local agency” means

any city, county, or special district, or subdivision thereof, which is authorized to provide solid waste handling services.

(e) “Renewable energy public goods charge” means that portion of the nonbypassable system benefits charge required to be collected to fund renewable energy pursuant to the Reliable Electric Service Investments Act (Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code).

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

(g) “Retail seller” means a “retail seller” as defined in Section 399.12 of the Public Utilities Code.

SEC. 2. Section 25741.5 is added to the Public Resources Code, to read:

25741.5. By May 31, 2010, the commission shall report to the Legislature whether out-of-state, run-of-river hydroelectric generating facilities that are no larger than 50 megawatts should be considered renewable electrical generating facilities. In making its report, the commission shall consider the emissions of carbon dioxide, other air pollutants, impacts on water quality, recreation, and fisheries, and other environmental impacts of these generating resources as compared to those of existing electric generating facilities.

SEC. 3. Section 387 of the Public Utilities Code is repealed.

SEC. 4. 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 eligible renewable energy resources by December 31, 2013, and 33 percent by December 31, 2020, and for the purposes of increasing the diversity, reliability, public health, and environmental benefits of the energy mix, reducing emissions of greenhouse gases, and promoting economic development it is the intent of the Legislature that the commission and the Energy Commission implement the California Renewables Portfolio Standard Program described in this article.

(b) Increasing California’s reliance on eligible 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 eligible 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 consumption.

(d) The California Renewables Portfolio Standard Program is intended to complement the Renewable Energy Resources Program administered by the Energy 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 will be necessary to facilitate the state achieving its renewables portfolio standard targets.

(f) (1) Delivering genuine renewable electricity to California end-use customers is necessary to improve California’s air quality and public health, and California end-use customers may be paying higher rates to achieve the procurement requirements of this article. This delivered electricity may be generated anywhere in the interconnected grid that includes many states, and areas of both Canada and Mexico.

(2) The definition of “delivered” and “delivery” requires generating resources located outside of California, but able to deliver that electricity to California end-use customers, to be treated identically to generating resources located within the state, without discrimination.

(3) California electrical corporations have already executed, and the commission has approved, power purchase agreements with eligible renewable energy resources located outside of California that will deliver renewable electricity to California end-use customers, and there are nearly 10,000 megawatts of additional proposed renewable energy resources located outside of California that are awaiting interconnection approval from the Independent System Operator. All of the delivered resources should

count as eligible renewable energy resources under the renewables portfolio standard procurement requirements.

SEC. 5. 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) “Conduit hydroelectric facility” means a facility for the generation of electricity that uses only the hydroelectric potential of an existing pipe, ditch, flume, siphon, tunnel, canal, or other manmade conduit that is operated to distribute water for a beneficial use.

(b) (1) “Delivered” and “delivery,” with respect to electricity, means that the electricity is used to serve end-use retail customers or energy storage facilities located within the state, and meets either of the following conditions:

(A) The electricity is generated at a location within the state.

(B) The electricity is generated at a location outside the state and scheduled for consumption by California end-use retail customers or energy storage facilities located within the state. Compliance with this requirement is demonstrated by one of the following means:

(i) Showing that the generator’s first point of interconnection is with facilities of a Transmission Service Provider, as that term is defined by North American Electric Reliability Corporation primarily located in this state.

(ii) Showing that the hourly metered output of the generator matches the import schedules of electricity flow from the generator, through the balancing authority area in which the generator is located, through any intermediate balancing authorities, to the balancing authority area of the end-use retail customers or energy storage facility located in this state.

(2) Notwithstanding clause (ii) of subparagraph (B) of paragraph (1), electricity is not delivered to the extent that either of the following occurs:

(A) The physical delivery of electricity is scheduled from a source other than a renewable electrical generation facility, as defined in Section 27541 of the Public Resources Code.

(B) The electricity output is scheduled for delivery to customers in a different hour from the time of generation by the renewable electrical generation facility.

(3) Consistent with subparagraph (A) of paragraph (2), the physical delivery of electricity from a renewable electrical generation facility may be accompanied by electricity provided by another source for purposes of facilitating scheduling. For purposes of this article, only the portion of electricity provided directly from the renewable electrical generation facility shall count toward meeting the renewables portfolio standard procurement requirements of this article.

(4) For purposes of determining compliance by an intermittent resource located outside California with the delivery requirements of this subdivision, any positive imbalance energy provided under applicable tariffs by the balancing authority in which the facility is located shall, in an amount not exceeding any negative imbalance energy provided by the intermittent resource, be included in the hourly metered output and considered generated by the eligible renewable energy resource.

(c) “Eligible renewable energy resource” means an electrical generating facility that meets the definition of a “renewable electrical generation facility” in Section 25741 of the Public Resources Code subject to the following:

(1) (A) An existing small hydroelectric generation facility of 30 megawatts or less shall be eligible only if a retail seller or local publicly owned electric utility owned or procured the electricity from the facility as of December 31, 2005. A small hydroelectric generation unit with a nameplate capacity not exceeding 40 megawatts that is operated as part of a water supply or conveyance system serving the jurisdiction of a local publicly owned electric utility is an eligible renewable energy resource if the local publicly owned electric utility owned or procured the electricity from the facility as of December 31, 2005. A new hydroelectric facility is not an eligible renewable energy resource if it will cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(B) Notwithstanding subparagraph (A), a conduit hydroelectric facility of 30 megawatts or less that commenced operation before January 1, 2006, is an eligible renewable energy resource. A conduit hydroelectric facility of 30 megawatts or less that commences operation after December 31, 2005, is an eligible renewable energy resource so long as it does not cause an adverse

impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(2) 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.

(d) “Procure” means to acquire through ownership or contract. For purposes of meeting the renewables portfolio standard procurement requirements, a retail seller or local publicly owned electric utility may procure either delivered electricity generated by an eligible renewable energy resource or renewable energy credits associated with electricity generated, but not necessarily delivered by, an eligible renewable energy resource. Nothing in this article is intended to imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling a retail seller’s obligation to comply with this article or the obligation of a local publicly owned electric utility to meet its renewables portfolio standard implemented pursuant to Section 399.30.

(e) (1) “Renewable energy credit” means a certificate of proof associated with the generation of electricity from an eligible renewable energy resource, issued through the accounting system established by the Energy Commission pursuant to Section 399.25, that one unit of electricity was generated by an eligible renewable energy resource.

(2) “Renewable energy credit” includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource, except for an emissions reduction credit issued pursuant to Section 40709 of the Health and Safety Code and any credits or payments associated with the reduction of solid waste and treatment benefits created by the utilization of biomass or biogas fuels.

(3) (A) No electricity generated by an eligible renewable energy resource attributable to the use of nonrenewable fuels, beyond a de minimis quantity, as determined by the Energy Commission for each renewable energy technology, shall result in the creation of a renewable energy credit.

(B) No electricity generated by a small hydroelectric generation facility shall result in the creation of a renewable energy credit

unless the facility meets the requirements of subparagraph (A) of paragraph (1) of subdivision (c).

(C) No electricity generated by a conduit hydroelectric generation facility shall result in the creation of a renewable energy credit unless the facility meets the requirements of subparagraph (B) of paragraph (1) of subdivision (c).

(D) No electricity generated by a facility engaged in the combustion of municipal solid waste shall result in the creation of a renewable energy credit unless the facility meets the requirements of paragraph (2) of subdivision (c).

(f) “Renewable energy public goods charge” means that portion of the nonbypassable system benefits charge required to be collected to fund renewable energy pursuant to the Reliable Electric Service Investments Act (Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1, for an electrical corporation, and pursuant to Section 385 for a local publicly owned electric utility.

(g) “Renewables portfolio standard” means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller or a local publicly owned electric utility is required to procure pursuant to this article.

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

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

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

(3) An electric service provider, as defined in Section 218.3, for all sales of electricity to customers beginning January 1, 2006. The commission shall institute a rulemaking to determine the manner in which electric service providers will participate in the renewables portfolio standard program. The electric service provider shall be subject to the same terms and conditions applicable to an electrical corporation pursuant to this article. Nothing in this paragraph shall impair a contract entered into between an electric service provider and a retail customer prior to

the suspension of direct access by the commission pursuant to Section 80110 of the Water Code.

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

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

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

(C) A local publicly owned electric utility.

SEC. 6. Section 399.13 of the Public Utilities Code is amended and renumbered to read:

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

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

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

(c) Establish a system for tracking and verifying renewable energy credits that, through the use of independently audited data, verifies the generation and delivery of electricity associated with each renewable energy credit and protects against multiple counting of the same renewable energy credit. The Energy Commission

shall consult with other western states and with the Western Electricity Coordinating Council in the development of this system.

(d) Certify, for purposes of compliance with the renewables portfolio standard requirements 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 all of the conditions of Section 399.31 have been met.

SEC. 7. Section 399.15 of the Public Utilities Code is repealed.

SEC. 8. Section 399.15 is added to the Public Utilities Code, to read:

399.15. (a) In order to fulfill unmet long-term resource needs, the commission shall establish a renewables portfolio standard requiring all retail sellers to procure a minimum quantity of electricity generated by eligible renewable energy resources as a specified percentage of total kilowatthours sold to their retail end-use customers each compliance period to achieve the targets established under this article.

(b) The commission shall implement renewables portfolio standard procurement requirements only as follows:

(1) Each retail seller shall procure the following minimum percentages of eligible renewable energy resources in the following years, and continue to procure at least those percentages in subsequent years:

(A) Until December 31, 2012, the same percentage as actually achieved by the retail seller during 2009.

(B) Twenty percent by December 31, 2012.

(C) Twenty-five percent by December 31, 2016.

(D) Thirty-three percent by December 31, 2020.

(2) A retail seller with 33 percent of its retail sales of electricity procured from eligible renewable energy resources in any year shall not be required to increase its procurement of renewable energy resources, except to the extent required to maintain a 33 percent renewables portfolio standard. A retail seller may voluntarily increase its procurement of eligible renewable energy resources beyond the renewables portfolio standard procurement requirements.

(3) Only for purposes of establishing the renewables portfolio standard procurement requirements of paragraph (1), the commission shall include all electricity sold to retail customers by

the Department of Water Resources pursuant to Section 80100 of the Water Code in the calculation of retail sales by an electrical corporation.

(4) The commission may only allow a retail seller for a maximum of two years per request to delay compliance with a renewables portfolio standard procurement requirement established pursuant to subparagraph (B) or (C) of paragraph (1), if it finds that the retail seller has demonstrated that either of the following conditions will prevent timely compliance:

(A) There is inadequate transmission capacity to allow for sufficient electricity to be delivered from proposed eligible renewable energy resource projects using the current operational protocols of the Independent System Operator (ISO). The commission shall consult with the ISO in making its findings relative to the existence of this condition. In making its findings relative to the existence of this condition with respect to a retail seller that owns transmission lines, the commission shall consider both of the following:

(i) Whether the retail seller has undertaken all reasonable measures to develop and construct new transmission lines or upgrades to existing lines in a timely fashion.

(ii) Whether the retail seller has taken all reasonable operational measures, as verified by the ISO, to maximize deliveries of electricity from eligible renewable energy resources in advance of transmission availability.

(B) Unanticipated permitting, interconnection, or other delays for procured eligible renewable energy resource projects, or there is an insufficient supply of delivered electricity from eligible renewable energy resources available to the retail seller. In making this finding, the commission shall consider whether the retail seller has prudently managed portfolio risks, relied on sufficient viable projects, sought to develop its own eligible renewable energy resources, and procured an appropriate minimum margin of procurement above the minimum procurement level necessary to comply with the renewables portfolio standard to compensate for foreseeable delays or insufficient supply.

(5) Prior to granting a delay pursuant to paragraph (4), the commission shall require a retail seller to demonstrate that it has presented evidence that it has made material progress in reducing its compliance deficit and has taken all reasonable measures

consistent with this article to procure cost-effective distributed generation and renewable energy credits consistent with the restrictions in paragraph (6) of subdivision (a) of Section 399.21.

(6) The commission may not approve any request to delay a compliance obligation for which it has already granted a delay unless a retail seller presents evidence that it has made material progress in reducing its compliance deficiency and has identified and taken all reasonable actions under its control to pursue additional options to comply with the delayed interim procurement obligation and remove impediments that are related to its delay.

(7) The commission may not authorize any delay in achieving the 33 percent by December 31, 2020, renewables portfolio standard procurement requirement of subparagraph (D) of paragraph (1).

(8) If a retail seller fails to procure sufficient eligible renewable energy resources to comply with a renewables portfolio standard procurement requirement and fails to obtain an order from the commission authorizing a compliance delay pursuant to paragraph (4), the commission shall exercise its authority pursuant to Section 2113.

(c) The commission shall establish a methodology to determine the market price of electricity for terms corresponding to the length of contracts with eligible renewable energy resources, in consideration of the long-term ownership, operating, and fixed-price fuel costs associated with fixed-price electricity from new generating facilities. The methodology shall reflect all of the following:

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

(2) All current and anticipated environmental compliance costs, including mitigation of emissions of greenhouse gases and air pollution offsets associated with the operation of new generating facilities.

(d) (1) The commission shall establish a limitation for each electrical corporation on the expenditures above the market costs determined in subdivision (c) for the procurement of all eligible renewable energy resources that are used to comply with the electrical corporation's renewables portfolio standard. The cost limitation shall equal 6 percent of the total bundled electric revenues recorded by the electrical corporation in 2008 multiplied

by the number of years remaining until 2020. Total bundled electric revenues shall include revenues collected by the electrical corporation on behalf of the Department of Water Resources for procurement activities conducted pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(2) The calculation of the above-market costs shall include all procurement of eligible renewable energy resources that are used to comply with the electrical corporation's renewables portfolio standard that are submitted for approval to the commission after January 1, 2010.

(3) The above-market costs of procurement do not include any indirect expenses, including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades.

(4) Calculations of the above-market costs shall include, as a reduction to the total above-market costs, procurement from eligible renewable energy resources that are used to meet the renewables portfolio standard procurement requirements established pursuant to paragraph (1) of subdivision (b) that are below the market prices determined in subdivision (c) for each year.

(5) In calculating the limit on above-market costs established in paragraph (1), the commission shall account for the potential that some procured resources may be delayed or canceled.

(e) If the cost limitation for an electrical corporation is insufficient to support the projected net above-market costs identified in subdivision (d), the commission shall allow the electrical corporation to refrain from entering into new contracts or to construct facilities for that future year beyond the quantity of eligible renewable energy resources that can be procured at or below the market prices established in subdivision (c).

(f) Notwithstanding subdivision (e), if an electrical corporation's net annual above-market costs for a future year exceed the electrical corporation's cost limitation, the electrical corporation may voluntarily propose to procure eligible renewable energy resources at above-market prices. Any voluntary procurement under this paragraph shall be subject to commission approval prior to the expense being recovered in rates.

(g) (1) The commission shall monitor the status of the cost limitation for each electrical corporation in order to ensure compliance with this article.

(2) If the commission determines that an electrical corporation may exceed its cost limitation prior to achieving the renewables portfolio standard procurement requirements, the commission shall do all of the following within 60 days of making that determination:

(A) Investigate and identify the reasons why the electrical corporation may exceed its annual cost limitation.

(B) Identify those actions that can be taken to ensure that the electrical corporation continues to comply with its renewables portfolio standard procurement requirements.

(C) Notify the appropriate policy and fiscal committees of the Legislature that the electrical corporation may exceed its cost limitation, the reasons why the electrical corporation may exceed its cost limitation, and those actions that may be taken by the electrical corporation to comply with the renewables portfolio standard procurement requirements.

(3) The commission shall examine mechanisms for mitigating the potential impact of low fossil fuel prices on the cost limitation of each electrical corporation and make recommendations to the Legislature on any changes in law it identifies to mitigate those impacts.

(h) The commission shall examine and adopt mechanisms to limit the potential influence of the market prices established in subdivision (c) on seller pricing and buyer contract selection.

(i) 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).

(j) The commission shall consult with the Energy Commission in establishing renewables portfolio standard policies.

SEC. 9. Section 399.16 of the Public Utilities Code is amended and renumbered to read:

399.21. (a) The commission, by rule, shall authorize the use of renewable energy credits to satisfy the renewables portfolio standard procurement requirements established pursuant to this article, subject to the following conditions:

(1) Prior to authorizing any renewable energy credit to be used toward satisfying the renewables portfolio standard procurement

requirements, the commission and the Energy Commission shall conclude that the tracking system established pursuant to subdivision (c) of Section 399.25, is operational, is capable of independently verifying that the electricity is generated by an eligible renewable energy resource and is delivered to the retail seller, and can ensure that renewable energy credits shall not be double counted by any seller of electricity within the service territory of the Western Electricity Coordinating Council (WECC).

(2) Each renewable energy credit shall be counted only once for compliance with the renewables portfolio standard of this state or any other state, or for verifying retail product claims in this state or any other state.

(3) All revenues received by an electrical corporation for the sale of a renewable energy credit shall be credited to the benefit of ratepayers.

(4) No renewable energy credits shall be created for electricity generated pursuant to any electricity purchase contract with a retail seller or a local publicly owned electric utility 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) of Section 399.25 and included in the quantity of eligible renewable energy resources of the purchasing retail seller pursuant to Section 399.15.

(5) No renewable energy credits shall be created 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) of Section 399.12 and count toward the renewables portfolio standard obligations of the purchasing retail seller.

(6) The use, by a retail seller, of renewable energy credits associated with electricity that does not satisfy the delivery requirements of subdivision (b) of Section 399.12 shall be limited to 25 percent of the retail seller's renewables portfolio standard procurement requirements.

(7) If a retail seller exceeds the 25 percent limitation of paragraph (6) as a result of contracts executed prior to September 18, 2009, and if those contracts are approved by the commission,

the retail seller shall be allowed to fully use the renewable energy credits toward meeting its renewables portfolio standard procurement requirements through the original term of the approved contracts, but may not procure additional renewable energy credits associated with electricity that does not satisfy the delivery requirements of subdivision (b) of Section 399.12. For a local publicly owned electric utility acting pursuant to subdivision (c) of Section 399.30, contract execution occurs on the date of project approval by the utility's governing board or the board of a joint powers authority of which the utility is a member and that approval shall take the place of approval by the commission for a retail seller.

(8) No renewable energy credit shall be eligible for compliance with a renewables portfolio standard procurement requirement after 18 months from the initial date of generation of the associated electricity. A renewable energy credit is used for compliance when the retail seller or local publicly owned electric utility irrevocably retires the credit within the tracking system established pursuant to subdivision (c) of Section 399.25.

(9) If an electrical corporation or local publicly owned electric utility owns and operates eligible renewable energy resources constructed after January 1, 2008, in its service territory or in the service territory of another electrical corporation or local publicly owned utility, it may use additional renewable energy credits beyond those allowed by paragraphs (6) and (7) in an amount authorized by this paragraph. The additional renewable energy credits shall be equal to the average annual amount of delivered electricity from the owned and operated eligible renewable energy resources, or the forecast of the delivered electricity from the resource after its construction has begun. Ownership of the resources shall be obtained by the electrical corporation no later than the time of commencement of commercial operation. The maximum amount of additional renewable energy credits authorized under this section shall not exceed 5 percent of the electrical corporation's renewables portfolio standard procurement requirements.

(10) Any additional condition that the commission determines is reasonable.

(b) The commission shall allow an electrical corporation to recover the reasonable costs of purchasing renewable energy credits in rates.

SEC. 10. Section 399.17 of the Public Utilities Code is amended to read:

399.17. (a) Subject to the provisions of this section, the requirements of this article apply to an electrical corporation with 60,000 or fewer customer accounts in California and that either serves retail end-use customers outside California or that is located in a control area that is not under the operational control of the Independent System Operator and receives the majority of its electrical requirements from generating facilities located outside of California.

(b) For an electrical corporation with 60,000 or fewer customer accounts in California and that either serves retail end-use customers outside California, or that is located in a control area that is not under the operational control of the Independent System Operator and receives the majority of its electrical requirements from generating facilities located outside of California, an eligible renewable energy resource includes a facility that is located outside California, if the facility is connected to the Western Electricity Coordinating Council (WECC) transmission system, provided all of the following conditions are met:

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

(2) The electrical corporation participates in, and complies with, the accounting system administered by the Energy Commission pursuant to subdivision (b) of Section 399.25.

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

(c) The commission shall determine the procurement requirements 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, or 399.14, and 399.25, 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 either serves retail end-use customers outside California, or that is located in a control area that is not under the operational control of the Independent System Operator and receives the majority of its electrical requirements from generating facilities located outside of 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. 11. Section 399.18 is added to the Public Utilities Code, to read:

399.18. The commission, in consultation with the Energy Commission, shall report to the Legislature by January 1 of every even-numbered year on all of the following:

(a) The progress and status of procurement activities by each retail seller.

(b) The status of permitting and siting eligible renewable energy resources and transmission facilities necessary to deliver the electricity generated to load, including the time taken to permit each eligible renewable energy resource and transmission line or upgrade, explanations of failures to meet permitting milestones, and recommendations for improvements to expedite permitting and siting processes.

(c) The projected ability of each electrical corporation to meet the renewables portfolio standard procurement requirements under the cost limitations in subdivision (d) of Section 399.15 and any recommendations for revisions of those cost limitations.

(d) Any barriers to, and policy recommendations for, achieving the renewables portfolio standard pursuant to this article.

SEC. 12. Section 399.30 is added to the Public Utilities Code, to read:

399.30. (a) In order to fulfill unmet long-term generation resource needs, each local publicly owned electric utility shall adopt and implement a renewable energy resources procurement plan that requires the utility to procure a minimum quantity of electricity generated by eligible renewable energy resources, including renewable energy credits, as a specified percentage of total kilowatthours sold to the utility's retail end-use customers, each calendar year, to achieve the targets of subdivision (b).

(b) The governing board shall implement procurement targets for a local publicly owned electric utility that require the utility to procure the following minimum percentages of eligible renewable energy resources in the following years, and continue to procure those percentages in subsequent years:

(1) Until December 31, 2012, the same percentage as actually achieved by the utility in 2009.

(2) Twenty percent by December 31, 2013.

(3) Twenty-five percent by December 31, 2016.

(4) Thirty-three percent by December 31, 2020.

(c) (1) A local publicly owned electric utility may use renewable energy credits associated with electricity generated, but not necessarily delivered by, an eligible renewable energy resource, to meet its renewables portfolio standard procurement requirements to the same extent as permitted for a retail seller pursuant to subdivision (a) of Section 399.21.

(2) A local publicly owned electric utility may adopt rules permitting the utility to apply excess procurement in one year to subsequent years in the same manner as allowed for retail sellers pursuant to Section 399.13.

(d) The governing board of the local publicly owned electric utility shall adopt a program for the enforcement of this article on or before January 1, 2011. The program shall be adopted at a publicly noticed meeting offering all interested parties an opportunity to comment. Not less than 30 days' notice shall be given to the public of any meeting held for purposes of adopting the program. Not less than 10 days' notice shall be given to the

public before any meeting is held to make a substantive change to the program.

(e) (1) Each local publicly owned electric utility shall annually post notice, in accordance with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, whenever its governing body will deliberate in public on its renewable energy resources procurement plan.

(2) Contemporaneous with the posting of the notice of a public meeting to consider the renewable energy resources procurement plan, the local publicly owned electric utility shall notify the Energy Commission of the date, time, and location of the meeting in order to enable the Energy Commission to post the information on its Internet Web site. This requirement is satisfied if the local publicly owned electric utility provides the uniform resource locator (URL) that links to this information.

(3) Upon distribution to its governing body of information related to its renewable energy resources procurement status and future plans, for its consideration at a noticed public meeting, the local publicly owned electric utility shall make that information available to the public and shall provide the Energy Commission with an electronic copy of the documents for posting on the Energy Commission's Internet Web site. This requirement is satisfied if the local publicly owned electric utility provides the uniform resource locator (URL) that links to the documents or information regarding other manners of access to the documents.

(f) A local publicly owned electric utility shall annually submit to the Energy Commission documentation regarding eligible renewable energy resources procurement contracts that it executed during the prior year, as follows:

(1) A description of the eligible renewable energy resource, including the duration of the contract or electricity purchase agreement.

(2) A description and identification of the electrical generating facility providing the eligible renewable energy resource under the contract.

(3) An estimate of the percentage increase in the utility's total retail sales of electricity from eligible renewable energy resources that will result from the contract.

(g) A public utility district that receives all of its electricity pursuant to a preference right adopted and authorized by the United

States Congress pursuant to Section 4 of the Trinity River Division Act of August 12, 1955 (Public Law 84-386) shall be in compliance with the renewable energy procurement requirements of this article.

(h) For a local publicly owned electric utility that was in existence on or before January 1, 2009, that provides retail electric service to 15,000 or fewer customer accounts in California, and is interconnected to a balancing authority located outside this state but within the WECC, an eligible renewable energy resource includes a facility that is located outside California that is connected to the WECC transmission system, if all of the following conditions are met:

(1) The electricity generated by the facility is procured by the local publicly owned electric utility, is delivered to the balancing authority area in which the local publicly owned electric utility is located, and is not used to fulfill renewable energy procurement requirements of other states.

(2) The local publicly owned electric utility participates in, and complies with, the accounting system administered by the Energy Commission pursuant to Article 4.

(3) The Energy Commission verifies that the electricity generated by the facility is eligible to meet the renewables portfolio standard procurement requirements.

(i) Notwithstanding subdivision (a), for a local publicly owned electric utility that is a joint powers authority of districts that furnish electric services other than to residential customers, and is formed pursuant to the Irrigation District Law (Division 11 (commencing with Section 20500) of the Water Code), the percentage of total kilowatthours sold to the district's retail end-use customers, upon which the renewables portfolio standard procurement requirements in subdivision (b) are calculated, shall be based on the average retail sales over the previous three years.

(j) A local publicly owned electric utility in a city and county that only receives greater than 67 percent of its electricity sources from hydroelectric generation located within the state that it owns and operates, and that does not meet the definition of a "renewable electrical generation facility" pursuant to Section 25741 of the Public Resources Code, shall be required to procure eligible renewable energy resources, including renewable energy credits, to meet only the electricity demands unsatisfied by its hydroelectric

generation in any given year, in order to satisfy its renewable energy procurement requirements.

(k) Each local publicly owned electric utility shall report, on an annual basis, to its customers and to the Energy Commission, all of the following:

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

(2) The resource mix used to serve its customers by energy source.

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

(l) A local publicly owned electric utility shall retain discretion over all of the following:

(1) The mix of eligible renewable energy resources procured or owned by the utility and those additional generation resources procured or owned by the utility for purposes of ensuring resource adequacy and reliability.

(2) The prices paid by the utility for electricity generated by eligible renewable energy resources.

(3) The reasonable costs incurred by the utility for eligible renewable energy resources owned by the utility.

(m) On or before July 1, 2010, the Energy Commission shall adopt regulations specifying procedures for enforcement of this article. The regulations shall include a public process under which the Energy Commission may issue a notice of violation and correction against a local publicly owned electric utility for failure to comply with this article, and for referral of violations to the State Air Resources Board for penalties pursuant to subdivision (n).

(n) (1) Upon a determination by the Energy Commission that a local publicly owned electric utility has failed to comply with this article, the Energy Commission shall refer the failure to comply with this article to the State Air Resources Board which may impose penalties to enforce this article consistent with Part 6 (commencing with Section 38580) of Division 25.5 of the Health and Safety Code.

(2) For the purpose of this subdivision, this section is an emissions reduction measure pursuant to Section 38580 of the Health and Safety Code.

(3) If the State Air Resources Board has imposed a penalty upon a local publicly owned electric utility for the utility's failure to comply with this article, the State Air Resources Board shall not impose an additional penalty for the same infraction, or the same failure to comply, with any renewables procurement requirement imposed upon the utility pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code).

(o) The commission has no authority or jurisdiction to enforce any of the requirements of this article on a local publicly owned electric utility.

SEC. 13. Section 399.31 is added to the Public Utilities Code, to read:

399.31. A retail seller may procure renewable energy credits associated with deliveries of electricity by an eligible renewable energy resource to a local publicly owned electric utility, for purposes of compliance with the renewables portfolio standard requirements, if both of the following conditions are met:

(a) The local publicly owned electric utility has adopted and implemented a renewable energy resources procurement plan that complies with the renewables portfolio standard adopted by the Energy Commission pursuant to subdivision (f) of Section 399.25.

(b) The local publicly owned electric utility is procuring sufficient eligible renewable energy resources to satisfy the target standard, and will not fail to satisfy the target standard in the event that the renewable energy credit is sold to the retail seller.

SEC. 14. Article 11 (commencing with Section 910) is added to Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 11. Reports

910. (a) The commission shall, on an annual basis by February 1 of each year, prepare and submit to the policy and fiscal committees of the Legislature a written report summarizing the following information:

(1) All electrical corporation revenue requirement increases associated with meeting the renewables portfolio standard, as defined in Section 399.12, including direct procurement costs for eligible renewable energy resources and renewable energy credits, administrative expenses for procurement, expenses incurred to ensure a reliable supply of electricity, and expenses for upgrades to the electrical transmission and distribution grid necessary to the delivery of electricity from eligible renewable energy resources to load.

(2) All cost savings experienced, or costs avoided, by electrical corporations as a result of meeting the renewables portfolio standard.

(3) All costs incurred by electrical corporations for incentives for distributed and renewable generation, including the self-generation incentive program, the California Solar Initiative, and net energy metering.

(4) All cost savings experienced, or costs avoided, by electrical corporations as a result of incentives for distributed and renewable generation.

(5) All renewable, fossil fuel, and nuclear procurement costs, research, study, or pilot program costs, or other program costs for which an electrical corporation is seeking recovery in rates, that is pending determination or approval by the commission.

(6) The decision number for each decision of the commission of recovery in rates of costs incurred by an electrical corporation since the preceding report.

(7) Any change in the electrical load serviced by an electrical corporation since the preceding report.

(b) The commission may combine the information required by this section with the reports prepared pursuant to Article 16 (commencing with Section 399.11) of Chapter 2.3.

SEC. 15. This bill shall only become operative if this bill and Assembly Bill 64 are both enacted and become effective on or before January 1, 2010.

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

the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

With respect to certain other costs, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 17. The sum of three hundred twenty-two thousand dollars (\$322,000) is hereby appropriated from the Public Utilities Commission Utilities Reimbursement Account to the Public Utilities Commission for additional staffing to identify, review, and approve transmission lines reasonably necessary or appropriate to facilitate achievement of the renewables portfolio standard established in Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code.

Approved _____, 2009

Governor