SENATE BILL No. 854

Introduced by Senator Blakeslee

February 18, 2011

An act to amend Section 25740 of the Public Resources Code, and to amend Sections 399.11, 399.12.5, 399.13, and 454.5 of, to add Section 399.18 to, to repeal Section 387 of, and to repeal and add Sections 399.12, 399.14, 399.15, 399.16, and 377.17 of, the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 854, as introduced, Blakeslee. Renewable energy resources.

(1) The existing California renewables portfolio standard program requires the Public Utilities Commission (PUC) to implement annual procurement targets for the procurement of eligible renewable energy resources, as defined, for all retail sellers, as defined, to achieve the targets and goals of the program. The renewables portfolio standard 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 (renewables portfolio standard). The renewables portfolio standard requires each retail seller to increase its total procurement of eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010. Under existing law the governing body 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 require an obligated party to procure an amount of renewable energy credits (RECs), as defined, sufficient to demonstrate compliance with the party's renewables portfolio standard, as defined, procurement requirements. Obligated parties would be defined to include an electrical corporation, electric service provider, community choice aggregator, and local publicly owned electric utility. The bill would establish renewables portfolio standards for 6 different compliance intervals, to be calculated by multiplying the obligated party's total electricity sales to California retail end-use customers during the compliance interval by a specified percentage that increases by interval from 20% of sales in January 1, 2012, to 40% of sales by January 1, 2027. The bill would require that not less than 50% of the renewables portfolio standard procurement requirements be met with bundled RECs, as defined, would authorize firmed and shaped RECs, as defined, to be used to meet not more than 50% of the procurement requirements, and would authorize tradable RECs, as defined, to be used to meet not more than 25% of the procurement requirements. The bill would make the PUC responsible for supervising the implementation of the renewables portfolio standard program by electrical corporations and overseeing certain aspects of the program by electric service providers and community choice aggregators. The bill would make its governing body responsible for implementation of the program by a local publicly owned electric utility. The bill would make numerous other revisions to the renewables portfolio standard program.

(2) Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to (A) certify eligible renewable energy resources, (B) design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, (C) establish a system for tracking and verifying RECs that verifies the generation and delivery of electricity associated with RECs, and (D) certify the eligibility of RECs associated with deliveries of electricity to a local publicly owned electric utility.

This bill would require the Energy Commission to design and implement an accounting system to verify compliance with the renewables portfolio standard by all obligated parties and would delete the separate requirement that it certify the eligibility of RECs associated with deliveries of electricity to a local publicly owned electric utility.

The bill would require the Energy Commission, among other things, to adopt regulations specifying procedures for enforcement of the renewables portfolio standard procurement 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 or other laws if that act is suspended or repealed.

(3) The bill would require every electrical corporation that owns electrical transmission facilities to annually prepare and submit a report to the PUC that contains specified matter and identifies any electrical transmission facility, upgrade, or enhancement that is reasonably necessary to achieve the renewables portfolio standard procurement requirements. The bill would delete certain reporting requirements and would require each electrical corporation, electric service provider, and community choice aggregator to prepare and submit to the PUC, and each local publicly owned electric utility to prepare and submit to the Energy Commission, an annual report that includes the current status and progress made by that obligated party toward meeting the renewables portfolio standard procurement requirements for the current compliance interval and recommendations to remove impediments towards its achievement. The bill would require the PUC, in coordination with the Energy Commission, the State Air Resources Board, the Independent System Operator, and local publicly owned electric utilities to conduct 3 reviews of the renewables portfolio standard program to assess changes that may be needed to improve implementation progress and to complete and present its review to the Legislature by December 31, 2015, December 31, 2020, and December 31, 2025.

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

Because certain provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by expanding the definition of a crime. By placing additional requirements upon local publicly owned electric utilities, the bill would impose a state-mandated local program.

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.

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

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

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

25740. It is the intent of the Legislature in establishing this program, to ~~increase the amount of electricity generated from eligible renewable energy resources per year, so that it equals at least 20 percent of total retail sales of electricity in California per year by December 31, 2010~~ *meet 40 percent of the state's electrical demand with generation from eligible renewable energy resources meeting the requirements of Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code*.

SEC. 2. Section 387 of the Public Utilities Code is repealed.

~~387. (a) Each governing body of a local publicly owned electric utility shall be responsible for implementing and enforcing a renewables portfolio standard that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement.~~

~~(b) Each local publicly owned electric utility shall report, on an annual basis, to its customers and to the State Energy Resources Conservation and Development Commission, 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 fuel type. Reports shall contain the contribution of each type of renewable energy resource with separate categories for those fuels that are eligible renewable energy resources as defined in Section 399.12, except that the electricity is delivered to the local publicly owned electric utility and not a retail seller. Electricity shall be reported as having been delivered to the local publicly owned electric utility from an eligible renewable energy resource when the electricity~~

~~would qualify for compliance with the renewables portfolio standard if it were delivered to a retail seller.~~

~~(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.~~

SEC. 3. 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, 2010, and for the purposes of increasing the diversity, reliability, public health and environmental benefits of the energy mix~~ *meeting 40 percent of the state's electrical demand with generation from eligible renewable energy resources,* it is the intent of the Legislature that the commission and the ~~State Energy Resources Conservation and Development~~ *Energy* Commission implement the California ~~Renewables Portfolio Standard Program~~ *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~~ *by diversifying the state's energy mix and reducing ratepayer exposure to the price volatility of natural gas used for conventional generation, while facilitating the expansion of California's clean energy economic sector and improving air quality*.

~~(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 State Energy Resources Conservation and Development Commission and established pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code.~~

(c) The generational characteristics of eligible renewable energy resources vary greatly among fuel types and geographic location. In addition, the adverse environmental impacts of different eligible renewable energy resources, including impacts to endangered or threatened species and their critical habitats, also range from minimal to significant. An obligated party's portfolio of eligible renewable energy resources should consist of renewable energy credits from a suite of different eligible renewable energy resources, located across a range of geographic locations, so as to minimize intermittency issues and the adverse environmental impacts of resource development in any one geographic location.

(d) New and modified integrating generational resources, including flexible gas-fired generation, are necessary to comply with federal electricity reliability requirements while facilitating the achievement of the renewables portfolio standard procurement requirements.

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

(f) The successful implementation of the California renewables portfolio standard program may serve as a model for regional and federal renewable energy policy. It is the intent of the Legislature that the program be designed and implemented in a manner that supports the development of regional and federal renewable energy programs.

SEC. 4. Section 399.12 of the Public Utilities Code is repealed.

~~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) "Delivered" and "delivery" have the same meaning as provided in subdivision (a) of Section 25741 of the Public Resources Code.~~

~~(c) "Eligible renewable energy resource" means an electrical generating facility that meets the definition of an "in-state renewable electricity generation facility" in Section 25741 of the Public Resources Code, subject to the following limitations:~~

~~(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 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 energy 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 that it owns or for which it has entered into an electricity purchase agreement. 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 387.~~

~~(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 399.13, that one unit of electricity was generated and delivered 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) No electricity generated by an eligible renewable energy resource attributable to the use of nonrenewable fuels, beyond a de minimis quantity used to generate electricity in the same process through which the facility converts renewable fuel to electricity, shall result in the creation of a renewable energy credit. The Energy Commission shall set the de minimis quantity of nonrenewable fuels for each renewable energy technology at a level of no more than 2 percent of the total quantity of fuel used by the technology to generate electricity. The Energy Commission may adjust the de minimis quantity for an individual facility, up to a maximum of 5 percent, if it finds that all of the following conditions are met:~~

~~(A) The facility demonstrates that the higher quantity of nonrenewable fuel will lead to an increase in generation from the eligible renewable energy facility that is significantly greater than generation from the nonrenewable fuel alone.~~

~~(B) The facility demonstrates that the higher quantity of nonrenewable fuels will reduce the variability of its electrical output in a manner that results in net environmental benefits to the state.~~

~~(C) The higher quantity of nonrenewable fuel is limited to either natural gas or hydrogen derived by reformation of a fossil fuel.~~

~~(f) "Renewables portfolio standard" means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller is required to procure pursuant to this article or the obligation of a local publicly owned electric utility to meet its renewables portfolio standard implemented pursuant to Section 387.~~

~~(g) "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. 5. Section 399.12 is added to the Public Utilities Code, to read:

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

(a) "Balancing authority" means the responsible entity that integrates resource plans ahead of time, maintains load-interchange generation balance within a balancing authority area, and supports interconnection frequency in real time.

(b) "Balancing authority area" means the collection of generation, transmission, and loads within the metered boundaries of the balancing authority. The balancing authority maintains the electrical load-resource balance within this area.

(c) (1) "Bundled renewable energy credits" means renewable energy credits procured with the underlying electricity that created the renewable energy credits that is used to serve the electrical load of retail end-use customers of an obligated party. "Bundled renewable energy credits" may only be created by eligible renewable energy resources under the operational control of a California balancing authority.

(2) Bundled renewable energy credits include renewable energy credits created by distributed generation resources for which an

obligated party compensates the generator for the underlying electricity that created the renewable energy credits, including both of the following:

(A) Electricity from eligible renewable energy resources participating in the standard contract and tariff program established pursuant to Section 399.20.

(B) Surplus electricity from a net surplus customer generator who elects to receive net surplus compensation pursuant to Section 2827.

(3) Renewable energy credits procured by an obligated party pursuant to a contract executed prior to January 1, 2010, that do not satisfy the definition of "bundled renewable energy credits," shall be treated as being bundled renewable energy credits.

(4) Bundled renewable energy credits sold or traded by an obligated party to a second party, independent of the underlying electricity that created the renewable energy credits, become "unbundled renewable energy credits" and are ineligible to meet an obligated party's bundled eligible renewable energy resources procurement requirement pursuant to subdivision (b) of Section 399.15.

(d) "California balancing authority" is a balancing authority with control over a balancing authority area primarily located in this state and operating for obligated parties subject to the requirements of this article and includes the ISO and a local publicly owned electric utility operating a transmission grid that is not under the operational control of the ISO. A California balancing authority is responsible for the operation of the transmission grid within its metered boundaries which may not be limited by the political boundaries of the State of California.

(e) "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.

(f) "Eligible renewable energy resource" means an electrical generation facility that uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, hydroelectric generation meeting the requirements specified in Section 399.12.5, digester gas, municipal solid waste conversion, municipal solid waste combustion meeting the requirements specified in Section

399.12.5, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology, and that satisfies one of the following requirements:

(1) The facility is interconnected to the distribution grid serving load within the state or is interconnected to the transmission grid that is under the operational control of a California balancing authority serving load within the state.

(2) The facility is interconnected to the transmission grid that is under the operational control of a balancing authority that is not primarily located inside California, but is located within the WECC service area, and satisfies all of the following requirements:

(A) It commences initial commercial operation on or after January 1, 2005.

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

(C) It participates in the accounting system established by the Energy Commission pursuant to subdivision (b) of Section 399.13.

(3) The facility is interconnected to the transmission grid that is under the operational control of a balancing authority that is not primarily located inside California but is located within the WECC service area, and satisfies all of the following requirements:

(A) It commences initial commercial operation before January 1, 2005.

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

(C) It participates in the accounting system established by the Energy Commission pursuant to subdivision (b) of Section 399.13.

(D) Electricity generated by the facility was procured by an obligated party as of January 1, 2010.

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

(g) "Firmed and shaped renewable energy credits" means those renewable energy credits procured from eligible renewable energy resources interconnected to the transmission grid that is under the operational control of a balancing authority that is within the WECC service area for which, in a calendar year, an amount of electricity equal to the number of renewable energy credits procured, is scheduled into a California balancing authority.

(h) "ISO" means the public benefit, nonprofit corporation organized pursuant to Sections 337, 340, and 341.5 and operating

pursuant to Article 3 (commencing with Section 345) and federal regulation.

(i) "Obligated party" means an entity subject to the requirements of this article and includes all of the following:

(1) A local publicly owned electric utility.

(2) An electrical corporation.

(3) An electric service provider.

(4) A community choice aggregator, as defined in Section 331.1.

(j) (1) "Renewable energy credit" means a certificate of proof associated with the generation of 1 megawatthour of electricity from an eligible renewable energy resource, issued through the accounting system established by the Energy Commission pursuant to Section 399.13.

(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) 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, shall not result in the creation of a renewable energy credit.

(k) "Renewables portfolio standard" means the specified percentage of renewable energy credits that an obligated party is required to procure pursuant to this article.

(*l*) "Tradable renewable energy credit" means a renewable energy credit that is sold or transferred independent of the underlying electricity that created the renewable energy credit. A "tradable renewable energy credit" includes both of the following:

(1) A renewable energy credit attributed to electricity generated by a customer-sited eligible renewable energy resource that uses the electrical output to serve the customer's on-site load and for which the customer has not received compensation for that electrical output, either through a tariff or standard contract made available pursuant to Section 399.12, or by having elected to receive net surplus electricity compensation pursuant to Section 2827.

(2) Unbundled renewable energy credits.

(m) "WECC" means the Western Electricity Coordinating Council of the North American Electric Reliability Corporation, or a successor to either corporation.

SEC. 6. Section 399.12.5 of the Public Utilities Code is amended to read:

399.12.5. (a) ~~Notwithstanding subdivision (c) of Section 399.12, a~~ *(1) A small hydroelectric generation facility of 30 megawatts or less is an eligible renewable energy resource if an obligated party owned or procured the electricity from the facility as of December 31, 2005.*

(2) A new small hydroelectric generation facility of 30 megawatts or less that commences generation of electricity on or after January 1, 2006, is an eligible renewable energy resource only if its operation does not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(3) Notwithstanding paragraph (1), a conduit hydroelectric facility of 30 megawatts or less that commenced operation before January 1, 2006, is an eligible renewable energy resource.

(4) A conduit hydroelectric facility of 30 megawatts or less that commences operation on or after January 1, 2006, is an eligible renewable energy resource only if its operation does not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(5) A small hydroelectric generation facility *or conduit hydroelectric facility* that satisfies the criteria ~~for~~ *to be* an eligible renewable energy resource pursuant to ~~Section 399.12~~ *this subdivision* shall not lose its eligibility if efficiency improvements undertaken after January 1, 2008, cause the generating capacity of the facility to exceed 30 megawatts, and the efficiency improvements do not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow. The entire generating capacity of the facility shall be eligible.

(b) ~~Notwithstanding subdivision (c) of Section 399.12, the~~ *The* incremental increase in the amount of electricity generated from a hydroelectric generation facility as a result of efficiency improvements at the facility, is electricity from an eligible renewable energy resource, without regard to the electrical output of the facility, if all of the following conditions are met:

(1) The incremental increase is the result of efficiency improvements from a retrofit that do not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(2) The hydroelectric generation facility meets one of the following certification mechanisms:

(A) The hydroelectric generation facility has, within the immediately preceding 15 years, received certification from the State Water Resources Control Board pursuant to Section 401 of the federal Clean Water Act (33 U.S.C. Sec. 1341), or has received certification from a regional board to which the state board has delegated authority to issue certification, unless the facility is not subject to certification because there is no potential for discharge into waters of the United States.

(B) If the hydroelectric facility is not located in California, the certification pursuant to Section 401 of the federal Clean Water Act (33 U.S.C. Sec. 1341) may be received from the applicable state board or agency or from a regional board to which the state board has delegated authority to issue the certification.

(C) If the hydroelectric generation facility is the Rock Creek Powerhouse, Federal Energy Regulatory Commission Project Number 1962, the efficiency improvements have received any necessary incremental certification from the State Water Resources Control Board.

(3) The hydroelectric generation facility is owned by a retail seller or a local publicly owned electric utility, was operational prior to January 1, 2007, the efficiency improvements are initiated on or after January 1, 2008, the efficiency improvements are not the result of routine maintenance activities, as determined by the Energy Commission, and the efficiency improvements were not included in any resource plan sponsored by the facility owner prior to January 1, 2008.

(4) All of the incremental increase in electricity resulting from the efficiency improvements are demonstrated to result from a long-term financial commitment by the retail seller or local publicly owned electric utility. For purposes of this paragraph, “long-term financial commitment” means either new ownership investment in the facility by the retail seller or local publicly owned electric utility or a new or renewed contract with a term of 10 or more years, which includes procurement of the incremental generation.

(c) The incremental increase in the amount of electricity generated from a hydroelectric generation facility as a result of efficiency improvements at the facility are not eligible for supplemental energy payments pursuant to the Renewable Energy Resources Program (Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code), or a successor program.

(d) Notwithstanding ~~subdivision (c) of Section 399.12 and~~ subdivisions (a) and (b), a hydroelectric generation facility that is an eligible renewable energy resource pursuant to this article as of January 1, 2010, shall not lose its eligibility if the facility causes a change in the volume or timing of streamflow required by license conditions approved pursuant to the Federal Power Act (Chapter 12 (commencing with Section 791a) of Title 16 of the United States Code) on or after January 1, 2010.

(e) A facility engaged in the combustion of municipal solid waste is an eligible renewable energy resource only if it is located in Stanislaus County and was operational prior to September 26, 1996.

SEC. 7. Section 399.13 of the Public Utilities Code is amended to read:

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

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

(b) Design and implement an accounting system to verify compliance with the renewables portfolio standard by ~~retail sellers~~ *obligated parties*, 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~~ *obligated parties*, 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 renewable portfolio standard requirements by ~~a retail seller~~ *obligated parties*, the eligibility of renewable energy credits ~~associated with deliveries of electricity by an eligible renewable energy resource to a local publicly owned electric utility, if the Energy Commission determines that the following conditions have been satisfied:~~.

~~(1) The local publicly owned electric utility that is procuring the electricity is in compliance with the requirements of Section 387.~~

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

(e) On or before July 1, 2012, the Energy Commission shall adopt regulations specifying procedures for 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 (f).

(f) (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) If Division 25.5 (commencing with Section 38500) of the Health and Safety Code is suspended or repealed, the State Air

Resources Board may take action to enforce this article on local publicly owned electric utilities consistent with Section 41513 of the Health and Safety Code, and impose penalties on a local publicly owned electric utility consistent with Article 3 (commencing with Section 42400) of Chapter 4 of Part 4 of, and Chapter 1.5 (commencing with Section 43025) of Part 5 of, Division 26 of the Health and Safety Code.

(3) For purposes of carrying out this subdivision, this article is an emissions reduction measure pursuant to Section 38580 of the Health and Safety Code.

(4) 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 portfolio standard 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).

(5) Any penalties collected by the State Air Resources Board pursuant to this article shall be deposited in the Air Pollution Control Fund and, upon appropriation by the Legislature, shall be expended for reducing emissions of air pollution or greenhouse gases within the same geographic area as the local publicly owned electric utility.

SEC. 8. Section 399.14 of the Public Utilities Code is repealed.

~~399.14. (a) (1) The commission shall direct each electrical corporation to prepare a renewable energy procurement plan that includes the matter in paragraph (3), to satisfy its obligations under the renewables portfolio standard. To the extent feasible, this procurement plan shall be proposed, reviewed, and adopted by the commission as part of, and pursuant to, a general procurement plan process. The commission shall require each electrical corporation to review and update its renewable energy procurement plan as it determines to be necessary.~~

~~(2) The commission shall adopt, by rulemaking, all of the following:~~

~~(A) A process for determining market prices pursuant to subdivision (c) of Section 399.15. The commission shall make specific determinations of market prices after the closing date of~~

~~a competitive solicitation conducted by an electrical corporation for eligible renewable energy resources.~~

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

~~(C) (i) Flexible rules for compliance, including rules permitting retail sellers to apply excess procurement in one year to subsequent years or inadequate procurement in one year to no more than the following three years. The flexible rules for compliance shall apply to all years, including years before and after a retail seller procures at least 20 percent of total retail sales of electricity from eligible renewable energy resources.~~

~~(ii) The flexible rules for compliance shall address situations where, as a result of insufficient transmission, a retail seller is unable to procure eligible renewable energy resources sufficient to satisfy the requirements of this article. Any rules addressing insufficient transmission shall require a finding by the commission that the retail seller has undertaken all reasonable efforts to do all of the following:~~

~~(I) Utilize flexible delivery points.~~

~~(II) Ensure the availability of any needed transmission capacity.~~

~~(III) If the retail seller is an electric corporation, to construct needed transmission facilities.~~

~~(IV) Nothing in this subparagraph shall be construed to revise any portion of Section 454.5.~~

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

~~about the agreement shall be disclosed by the commission: party names, resource type, project location, and project capacity.~~

~~(3) Consistent with the goal of procuring the least-cost and best-fit eligible renewable energy resources, the renewable energy procurement plan submitted by an electrical corporation shall include all of the following:~~

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

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

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

~~(4) In soliciting and procuring eligible renewable energy resources, each electrical corporation shall offer contracts of no less than 10 years in duration, unless the commission approves of a contract of shorter duration.~~

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

~~(b) The commission may authorize a retail seller to enter into a contract of less than 10 years' duration with an eligible renewable energy resource, if the commission has established, for each retail seller, minimum quantities of eligible renewable energy resources to be procured either through contracts of at least 10 years' duration or from new facilities commencing commercial operations on or after January 1, 2005.~~

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

~~(d) The commission shall review the results of an eligible renewable energy resources solicitation submitted for approval by an electrical corporation and accept or reject proposed contracts with eligible renewable energy resources based on consistency with the approved renewable energy procurement plan. If the commission determines that the bid prices are elevated due to a~~

~~lack of effective competition among the bidders, the commission shall direct the electrical corporation to renegotiate the contracts or conduct a new solicitation.~~

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

~~(f) (1) The commission may authorize a procurement entity to enter into contracts on behalf of customers of a retail seller for deliveries of eligible renewable energy resources to satisfy annual renewables portfolio standard obligations. The commission may not require any person or corporation to act as a procurement entity or require any party to purchase eligible renewable energy resources from a procurement entity.~~

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

~~(g) Procurement and administrative costs associated with long-term contracts entered into by an electrical corporation for eligible renewable energy resources pursuant to this article and approved by the commission shall be deemed reasonable per se, and shall be recoverable in rates.~~

~~(h) Construction, alteration, demolition, installation, and repair work on an eligible renewable energy resource that receives production incentives pursuant to Section 25742 of the Public Resources Code, including work performed to qualify, receive, or maintain production incentives is "public works" for the purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.~~

SEC. 9. Section 399.14 is added to the Public Utilities Code, to read:

399.14. (a) The commission, by rulemaking, shall adopt all of the following with respect to compliance with the requirements of this article by an electrical corporation:

(1) A process that provides criteria for the rank ordering and selection of least-cost and best-fit eligible renewable energy resources to comply with the procurement obligations of this article, on a total cost basis. This process shall take into account all of the following:

(A) Estimates of indirect costs associated with needed transmission investments and ongoing electrical corporation expenses resulting from integrating and operating eligible renewable energy resources.

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

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

(D) The potential for electrical generation from the eligible renewable energy resource to either be curtailed or provided to retail end-use customers who are compensated with ratepayer dollars for consuming the generation.

(E) The siting, permitting, and environmental impact benefits of eligible renewable energy resources located in any of the following:

(i) Lands identified by the federal government to be retired from agricultural production.

(ii) Lands disturbed from their natural state by mining or other activity of man.

(iii) Lands disturbed by agricultural activities that are unsuitable for future agricultural uses due to salt or mineral accumulations in the soil, as determined by local agricultural commissioners.

(2) Standard terms and conditions to be used by all electrical corporations in contracting for eligible renewable energy resources, including performance requirements for renewable generators. A contract for the purchase of electricity generated by an eligible renewable energy resource, at a minimum, shall include the renewable energy credits associated with all electricity generation specified under the contract. The standard terms and conditions shall include the requirement that, no later than six months after the commission's approval of an electricity purchase agreement

entered into pursuant to this article, the following information about the agreement shall be disclosed by the commission: party names, resource type, project location, and project capacity.

(b) 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).

(c) The commission may exercise its authority pursuant to Section 2113 to require an electrical corporation to comply with any part of this article and may enforce comparable penalties on community choice aggregators or energy service providers for failure to comply with any part of this article.

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

SEC. 10. Section 399.15 of the Public Utilities Code is repealed.

~~399.15. (a) In order to fulfill unmet long-term resource needs, the commission shall establish a renewables portfolio standard requiring all electrical corporations to procure a minimum quantity of electricity generated by eligible renewable energy resources as a specified percentage of total kilowatthours sold to their retail end-use customers each calendar year, subject to limits on the total amount of costs expended above the market prices determined in subdivision (c), to achieve the targets established under this article.~~

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

~~(1) Each retail seller shall, pursuant to subdivision (a), increase its total procurement of eligible renewable energy resources by at least an additional 1 percent of retail sales per year so that 20 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010. A retail seller with 20 percent of retail sales procured from eligible renewable energy resources in any year shall not be required to increase its procurement of renewable energy resources in the following year.~~

~~(2) For purposes of setting annual procurement targets, the commission shall establish an initial baseline for each retail seller based on the actual percentage of retail sales procured from eligible renewable energy resources in 2001, and to the extent applicable, adjusted going forward pursuant to Section 399.12.~~

~~(3) Only for purposes of establishing these targets, 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) In the event that a retail seller fails to procure sufficient eligible renewable energy resources in a given year to meet any annual target established pursuant to this subdivision, the retail seller shall procure additional eligible renewable energy resources in subsequent years to compensate for the shortfall, subject to the limitation on costs for electrical corporations established pursuant to subdivision (d).~~

~~(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 following:~~

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

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

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

~~(d) The commission shall establish, for each electrical corporation, a limitation on the total costs expended above the market prices determined in subdivision (c) for the procurement of eligible renewable energy resources to achieve the annual procurement targets established under this article.~~

~~(1) The cost limitation shall be equal to the amount of funds transferred to each electrical corporation by the Energy Commission pursuant to subdivision (b) of Section 25743 of the Public Resources Code and the 51.5 percent of the funds which would have been collected through January 1, 2012, from the customers of the electrical corporation based on the renewable energy public goods charge in effect as of January 1, 2007.~~

~~(2) The above-market costs of a contract selected by an electrical corporation may be counted toward the cost limitation if all of the following conditions are satisfied:~~

~~(A) The contract has been approved by the commission and was selected through a competitive solicitation pursuant to the requirements of subdivision (d) of Section 399.14.~~

~~(B) The contract covers a duration of no less than 10 years.~~

~~(C) The contracted project is a new or repowered facility commencing commercial operations on or after January 1, 2005.~~

~~(D) No purchases of renewable energy credits may be eligible for consideration as an above-market cost.~~

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

~~(3) If the cost limitation for an electrical corporation is insufficient to support the total costs expended above the market prices determined in subdivision (c) for the procurement of eligible renewable energy resources satisfying the conditions of paragraph (2), the commission shall allow the electrical corporation to limit its procurement to the quantity of eligible renewable energy resources that can be procured at or below the market prices established in subdivision (c).~~

~~(4) Nothing in this section prevents an electrical corporation from voluntarily proposing to procure eligible renewable energy resources at above-market prices that are not counted toward the cost limitation. Any voluntary procurement involving above-market costs shall be subject to commission approval prior to the expense being recovered in rates.~~

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

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

SEC. 11. Section 399.15 is added to the Public Utilities Code, to read:

399.15. (a) An obligated party shall procure an amount of renewable energy credits sufficient to demonstrate compliance with the obligated party's renewables portfolio standard procurement requirements. The obligated party's renewables portfolio standard procurement requirements shall be calculated

by multiplying the obligated party's total electricity sales to California retail end-use customers during the compliance interval by the renewable energy credit percentage for the compliance interval. The renewables portfolio standard procurement requirements for compliance intervals are as follows:

(1) Twenty percent of the total electricity sales to retail end-use customers from January 1, 2012, through December 31, 2014.

(2) Twenty-four percent of the total electricity sales to retail end-use customers from January 1, 2015, through December 31, 2017.

(3) Twenty-eight percent of the total electricity sales to retail end-use customers from January 1, 2018, through December 31, 2020.

(4) Thirty-two percent of the total electricity sales to retail end-use customers from January 1, 2021, through December 31, 2023.

(5) Thirty-six percent of the total electricity sales to retail end-use customers from January 1, 2024, through December 31, 2026.

(6) Forty percent of the total electricity sales to retail end-use customers from January 1, 2027, through December 31, 2029, and every three-year interval thereafter.

(b) In furtherance of the goals of, and consistent with the intent of, the Legislature identified in Section 399.11, obligated parties shall meet their procurement obligations pursuant to the following requirements and limitations:

(1) Bundled renewable energy credits shall be used to meet not less than 50 percent of the renewables portfolio standard procurement requirements for a compliance interval.

(2) Firmed and shaped renewable energy credits may be used to meet not more than 50 percent of the renewables portfolio standard procurement requirements for a compliance interval.

(3) Tradable renewable energy credits may be used to meet not more than 25 percent of the renewables portfolio standard procurement requirements for a compliance interval.

(c) (1) By June 1 of the year following a compliance interval, each electrical corporation, electric service provider, and community choice aggregator shall submit to the commission, and each local publicly owned electric utility shall submit to the Energy Commission, a compliance interval report demonstrating

compliance with the renewables portfolio standard procurement requirements for the preceding compliance interval.

(2) If an obligated party's compliance interval report indicates the obligated party did not meet its renewables portfolio standard procurement requirements, the obligated party shall explain, in detail, the reasons for the deficiency.

(d) Renewable energy credits retired for the purpose of compliance with the renewables portfolio standard procurement requirements for each compliance interval shall be retired no later than the compliance deadline for that compliance interval.

(e) Obligated parties shall not be required to procure eligible renewable energy resources or renewable energy credits in excess of the renewables portfolio standard procurement requirements for a compliance interval.

SEC. 12. Section 399.16 of the Public Utilities Code is repealed.

~~399.16. (a) The commission, by rule, may authorize the use of renewable energy credits to satisfy the requirements of the renewables portfolio standard established pursuant to this article, subject to the following conditions:~~

~~(1) Prior to authorizing any renewable energy credit to be used toward satisfying annual procurement targets, the commission and the Energy Commission shall conclude that the tracking system established pursuant to subdivision (c) of Section 399.13, is operational, is capable of independently verifying the electricity generated by an eligible renewable energy resource and 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) A 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) The electricity is delivered to a retail seller, the Independent System Operator, or a local publicly owned electric utility.~~

~~(4) All revenues received by an electrical corporation for the sale of a renewable energy credit shall be credited to the benefit of ratepayers.~~

~~(5) 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 399.13 and included in the baseline quantity of eligible renewable energy resources of the purchasing retail seller pursuant to Section 399.15.~~

~~(6) 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.~~

~~(7) The commission may limit the quantity of renewable energy credits that may be procured unbundled from electricity generation by any retail seller, to meet the requirements of this article.~~

~~(8) No electrical corporation shall be obligated to procure renewable energy credits to satisfy the requirements of this article in the event that the total costs expended above the applicable market prices for the procurement of eligible renewable energy resources exceeds the cost limitation established pursuant to subdivision (d) of Section 399.15.~~

~~(9) 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. 13. Section 399.16 is added to the Public Utilities Code, to read:

399.16. (a) A 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.

(b) A renewable energy credit shall be applied toward an obligated party's renewables portfolio standard procurement requirements within 60 months from the date of generation or the

credit expires and after the passage of 60 months the renewable energy credit is no longer eligible for use by the obligated party for compliance with its renewables portfolio standard procurement requirements.

(c) Once a renewable energy credit is applied towards an obligated party's renewables portfolio standard procurement requirement it shall not be sold, transferred, or otherwise applied.

(d) (1) Renewable energy credits that are retired in one compliance interval may be banked by the regulated party and applied to the subsequent compliance interval, but only if the regulated party exceeds its renewables portfolio standard procurement requirements for the initial compliance interval.

(2) Bundled renewable energy credits that are banked shall be applied towards the obligated party's renewables portfolio standard procurement requirements established pursuant to subdivision (b) of Section 399.15.

(3) Firmed and shaped renewable energy credits and tradable renewable energy credits that are retired in one compliance interval may be banked for use in the subsequent compliance interval and shall be applied toward the respective limitations established for their individual uses in subdivision (b) of Section 399.15.

(4) Banked renewable energy credits may only be used by the obligated party to satisfy their own renewables portfolio standard procurement requirements for the compliance interval immediately following the compliance interval during which the renewable energy credit was generated.

(5) For an obligated party that retired renewable energy credits equal to at least 18 percent of its retail sales in 2010, any renewable energy credits in excess of that 18 percent may be banked for use in the first compliance interval of January 1, 2012, to December 31, 2014, and may be applied to the obligated party's bundled renewables portfolio standard procurement requirement established pursuant to subdivision (b) of Section 399.15.

SEC. 14. Section 399.17 of the Public Utilities Code is repealed.

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

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

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

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

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

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

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

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

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

399.17. (a) The following provisions apply to all electrical corporations:

(1) Each electrical corporation shall prepare a renewable energy procurement plan to meet its renewables portfolio standard procurement requirements. To the extent feasible, this procurement plan shall be proposed, reviewed, and adopted by the commission as part of, and pursuant to, a general procurement plan process pursuant to Section 454.5. The commission shall require each electrical corporation to review and update its renewable energy procurement plan as it determines to be necessary.

(2) Consistent with the criteria adopted by the commission pursuant to paragraph (1) of subdivision (a) of Section 399.14 for procuring the least-cost and best-fit eligible renewable energy resources, the renewable energy procurement plan submitted by an electrical corporation shall include all of the following:

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

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

(C) Information relative to the current status of development of all eligible renewable energy resources currently under contract.

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

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

(3) In soliciting and procuring eligible renewable energy resources, each electrical corporation shall offer initial contracts of no less than 10 years duration, unless the commission approves a contract of shorter duration. An electrical corporation may offer a contract less than 10 years in duration to eligible renewable

energy resources after the initial long-term contract has been fulfilled.

(4) The commission shall review and accept, modify, or reject each electrical corporation's renewable energy procurement plan prior to the commencement of procurement of eligible renewable energy resources by the electrical corporation.

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

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

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

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

(9) An electrical corporation shall be allowed to recover in rates the reasonable costs of procuring tradable renewable energy credits that are incurred consistent with the requirements of this article.

(b) The following provisions apply to an electrical corporation with 60,000 or fewer customer accounts in California, that serves retail end-use customers outside California, and that is located outside of a California balancing authority:

(1) The commission shall determine the renewables portfolio standard procurement requirements for the electrical corporation or qualifying successor entity based on total kilowatthours sold

by the electrical corporation to its retail end-use customers in California during a compliance interval.

(2) The electrical corporation or qualifying successor entity 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 subdivision (a), if the plan meets the requirements of Sections 399.13, 399.14, and 399.15, as modified by this section.

(3) Procurement and administrative costs associated with long-term contracts for eligible renewable energy resources pursuant to this article entered into by the electrical corporation or qualifying successor entity and approved by the commission, are reasonable and prudent and shall be recoverable in the rates of the electrical corporation or its successor's California customers, if those costs are not recoverable in rates in other states served by the electrical corporation.

(c) The following provisions apply to a local publicly owned electric utility:

(1) Each local publicly owned electric utility shall adopt and implement a renewable energy procurement plan to satisfy its renewables portfolio standard procurement requirements. To the extent feasible, this procurement plan shall be proposed, reviewed, and adopted by the governing body as part of, and pursuant to, a general procurement plan process.

(2) The renewable energy procurement plan adopted by a local publicly owned electric utility shall include all of the following:

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

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

(C) Information relative to the current status of development of all eligible renewable energy resources currently under contract.

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

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

(3) In soliciting and procuring eligible renewable energy resources, each local publicly owned electric utility shall offer initial contracts of no less than 10 years duration, unless its governing board approves a contract of shorter duration. A local publicly owned electric utility may offer a contract less than 10 years in duration to eligible renewable energy resources after the initial long-term contract has been fulfilled.

(4) The governing body of the local publicly owned electric utility shall adopt a program for the enforcement of this article on or before January 1, 2012. 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.

(5) (A) 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.

(B) 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.

(6) 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.

(d) 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 renewables portfolio standard procurement requirements of this article.

(e) 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 this article.

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

(f) 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 an eligible renewable energy resource, 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 compliance period, in order to meet its renewables portfolio standard procurement requirements.

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

SEC. 16. Section 399.18 is added to the Public Utilities Code, to read:

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

(b) Each electrical corporation, electric service provider, and community choice aggregator shall prepare and submit to the commission, and each local publicly owned electric utility shall prepare and submit to the Energy Commission, an annual report that includes both of the following:

(1) The current status and progress made during the prior year toward meeting the renewables portfolio standard procurement requirements of the current compliance interval, including, if applicable, the status of any necessary siting and permitting approvals from federal, state, and local agencies for those eligible renewable energy resources procured by the obligated party, procurement of eligible renewable energy resources located outside the state, and procurement of renewable energy credits.

(2) Recommendations to remove impediments to making progress toward achieving the renewables portfolio standard procurement requirements established pursuant to this article.

(c) (1) The commission, in coordination with the Energy Commission, the State Air Resources Board, the ISO, and local publicly owned electric utilities, shall conduct three reviews of the renewables portfolio standard program to assess changes that may be needed to improve implementation progress. Reviews shall be

completed and presented to the Legislature by December 31, 2015, December 31, 2020, and December 31, 2025.

(2) The reviews may consider information made available through the proceedings of the Energy Commission, the State Air Resources Board, the ISO, and local publicly owned electric utilities relative to the integration of eligible renewable energy resources into the electrical transmission and distribution system. The scope of each review shall include consideration of the following:

(A) The progress made by obligated parties toward compliance with the renewables portfolio standard procurement requirements.

(B) Whether compliance interval adjustments are desirable to reduce costs and increase benefits for California's economy, improve and modernize California's energy infrastructure, maximize potential reductions in emissions of greenhouse gases and criteria air pollutants, and maintaining the reliability of the electrical system reliability.

(C) Advances in renewable energy generation technologies, and complementary storage technologies, and the feasibility and cost effectiveness those advances that may contribute to the effectiveness of program implementation.

(D) The availability and supplies of eligible renewable energy resources and renewable energy credits within the WECC service area.

(E) The impact of integrating variable eligible renewable energy resources on the reliability of the electrical system. In considering this matter, the commission shall consult with, and where relevant incorporate information developed by, the Energy Commission and the ISO.

(F) The impacts associated with implementation of this article on electric service rates, consumers, and economic growth.

(G) The impacts associated with implementation of this article upon public health, including the operational impacts of generating facilities, demand response measures, and storage facility development needed to implement this article.

(H) The impacts upon air quality in California associated with implementation of this article, including effects on attainment of state or federal air quality standards.

(I) The impact of barriers or delays to the development of eligible renewable energy resources encountered by obligated parties, such as transmission permitting and development issues.

(J) Opportunities to harmonize the renewables portfolio standard with any federal, regional, or other state renewable energy programs or renewable energy credit markets.

(3) The commission shall conduct the reviews in a public process and shall conduct at least one public workshop for each review prior to presenting its findings to the Legislature. In presenting the results of each program review to the Legislature, the commission shall propose any amendments or such other action as the commission determines is warranted.

(4) The reports to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 17. Section 454.5 of the Public Utilities Code is amended to read:

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

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

(1) An assessment of the price risk associated with the electrical corporation's portfolio, including any utility-retained generation, existing power purchase and exchange contracts, and proposed contracts or purchases under which an electrical corporation will procure electricity, electricity demand reductions, and

electricity-related products and the remaining open position to be served by spot market transactions.

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

(3) The duration of the plan.

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

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

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

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

(8) Procedures for updating the procurement plan.

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

(A) The electrical corporation ~~will~~, in order to fulfill its unmet resource needs ~~and in furtherance of Section 701.3, until a 20 percent renewable resources portfolio is achieved, procure renewable energy resources with the goal of ensuring that at least an additional 1 percent per year of the electricity sold by the electrical corporation is generated from renewable energy resources, provided sufficient funds are made available pursuant to Sections 399.6 and 399.15, to cover the above-market costs for new renewable energy resources~~, *shall procure resources from eligible renewable energy resources in an amount sufficient to meet its procurement requirements pursuant to the California*

renewables portfolio standard program (Article 16 (commencing with Section 399.11) of Chapter 2.3).

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

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

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

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

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

(c) The commission shall review and accept, modify, or reject each electrical corporation's procurement plan. The commission's review shall consider each electrical corporation's individual procurement situation, and shall give strong consideration to that situation in determining which one or more of the features set forth in this subdivision shall apply to that electrical corporation. A procurement plan approved by the commission shall contain one or more of the following features, provided that the commission may not approve a feature or mechanism for an electrical corporation if it finds that the feature or mechanism would impair the restoration of an electrical corporation's creditworthiness or would lead to a deterioration of an electrical corporation's creditworthiness:

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

(2) An incentive mechanism that establishes a procurement benchmark or benchmarks and authorizes the electrical corporation to procure from the market, subject to comparing the electrical

corporation's performance to the commission-authorized benchmark or benchmarks. The incentive mechanism shall be clear, achievable, and contain quantifiable objectives and standards. The incentive mechanism shall contain balanced risk and reward incentives that limit the risk and reward of an electrical corporation.

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

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

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

(2) Eliminate the need for after-the-fact reasonableness reviews of an electrical corporation's actions in compliance with an approved procurement plan, including resulting electricity procurement contracts, practices, and related expenses. However, the commission may establish a regulatory process to verify and ~~assure~~ *ensure* that each contract was administered in accordance with the terms of the contract, and contract disputes ~~which~~ *that* may arise are reasonably resolved.

(3) Ensure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. The commission shall establish rates based on forecasts of procurement costs adopted by the commission, actual procurement costs incurred, or combination thereof, as determined by the commission. The commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan. The commission shall review the power procurement balancing accounts, not less than semiannually, and shall adjust rates or order refunds, as necessary, to promptly amortize a balancing account, according to a schedule determined by the commission. Until

January 1, 2006, the commission shall ensure that any overcollection or undercollection in the power procurement balancing account does not exceed 5 percent of the electrical corporation's actual recorded generation revenues for the prior calendar year excluding revenues collected for the Department of Water Resources. The commission shall determine the schedule for amortizing the overcollection or undercollection in the balancing account to ensure that the 5 percent threshold is not exceeded. After January 1, 2006, this adjustment shall occur when deemed appropriate by the commission consistent with the objectives of this section.

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

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

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

(f) The commission may engage an independent consultant or advisory service to evaluate risk management and strategy. The reasonable costs of any consultant or advisory service is a reimbursable expense and eligible for funding pursuant to Section 631.

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

(h) Nothing in this section alters, modifies, or amends the commission's oversight of affiliate transactions under its rules and decisions or the commission's existing authority to investigate and penalize an electrical corporation's alleged fraudulent activities,

or to disallow costs incurred as a result of gross incompetence, fraud, abuse, or similar grounds. Nothing in this section expands, modifies, or limits the State Energy Resources Conservation and Development Commission's existing authority and responsibilities as set forth in Sections 25216, 25216.5, and 25323 of the Public Resources Code.

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

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

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

(3) Notwithstanding paragraph (2), the commission may deem proposed procurement eligible to use the procedures in this section upon its approval of asset divestiture pursuant to Section 851.

SEC. 18. 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 or because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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