AMENDED IN SENATE JUNE 23, 2009

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CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 64

Introduced by Assembly Members Krekorian and Bass

December 9, 2008

An act to add Article 7.3 (commencing with Section 12078) to Chapter 1 of Part 2 of Division 3 of Title 2 of the Government Code, to amend Sections 25107, 25123, 25324, 25333, 25500, 25501, 25502, 25503, 25516, 25517, 25531, 25540.6, 25740, 25740.5, 25741, and 25742 of, and to add Section 25108.5 to, the Public Resources Code, and to amend Sections 454.5 and 1002 of, to amend and repeal Section 387 of, to add Sections 399.23 and 1004.5 to, to add Chapter 4.5 (commencing with Section 950) to Part 1 of Division 1 of, and to repeal Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of, the Public Utilities Code, relating to ~~energy, and making an appropriation therefor.~~ *energy.*

LEGISLATIVE COUNSEL'S DIGEST

AB 64, as amended, Krekorian. Energy: renewable energy resources: generation and transmission.

(1) The Public Utilities Act imposes various duties and responsibilities on the Public Utilities Commission (PUC) with respect

to the purchase of electricity and requires the PUC to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program *(RPS program)*. The *RPS* program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, but not including local publicly owned electric utilities, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard). The renewables portfolio standard requires the PUC to implement annual procurement targets for 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. Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to certify eligible renewable energy resources and to design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers. Under existing law the governing board of a local publicly owned electric utility is responsible for implementing and enforcing a renewables portfolio standard for the utility that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement.

This bill would recast the ~~renewables portfolio standard~~ *RPS* program, to be operative on January 1, 2011, ~~to~~ *and which the commission would enforce with respect to a retail seller once that retail seller procures 20% of its retail sales from eligible renewable energy resources. Upon the recast RPS program becoming operative, the bill would* require that a retail seller and a local publicly owned electric utility: (1) procure at least ~~20%~~ *23%* of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, ~~2010~~ *2014*, (2) procure at least ~~25%~~ *27%* of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, ~~2015~~ *2017*, and (3) procure at least 33% of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, 2020. The PUC would be responsible for implementing these requirements for retail sellers, while the governing board would

be responsible for implementing these requirements for a local publicly owned electric utility. The bill would require the PUC to establish procurement targets for retail sellers that are sufficient to reach the above-stated requirements. The bill would require that an electrical corporation's renewable energy procurement plan include a process that provides criteria for the rank ordering and selection of eligible renewable energy resources to comply with the above-stated procurement requirements so that ~~each~~ *the* corporation's total renewables portfolio benefits ratepayers. The bill would require the PUC to annually establish and adopt a benchmark price for electricity generated by an eligible renewable energy resource, for terms corresponding to the length of contracts, in consideration of specified matter, and ~~for each electrical corporation, to establish a limitation on the total costs expended above the benchmark prices for procurement of electricity pursuant to the renewables portfolio standard and would prohibit the limitation from exceeding 5% of the electrical corporation's revenue requirements. The bill would require the PUC to allow an electrical corporation or other retail seller to limit its procurement to the quantity of eligible renewable energy resources that can be purchased at or below the cost limitation if insufficient to support the total costs expended above the benchmark price~~ *would prohibit the PUC from requiring a retail seller to procure additional electricity from eligible renewable energy resources if the net annualized costs, as specified, expended above the benchmark price exceeds 5% of the retail seller's total system annual revenue requirements, as defined. The bill would require the governing board of a local publicly owned electric utility to implement a similar limitation for the utility*. The bill would revise existing law with respect to the use of renewable energy credits to meet the renewables portfolio standard procurement requirements. The bill would authorize the PUC to modify certain requirements for an electrical corporation with 60,000 or fewer customer accounts in the state that serves retail end-use customers outside the state and provides that a public utility district that receives all of its electricity from hydroelectric generation pursuant to a preference right created by a specified federal law is in compliance with the renewables portfolio standard.

(2) Existing law requires the PUC to require the state's 3 largest electrical corporations, Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison, to identify a separate electrical rate component to fund programs that enhance system reliability and provide in-state benefits. This rate component is a

nonbypassable element of local distribution and collected on the basis of usage. Existing PUC resolutions refer to the nonbypassable rate component as a "public goods charge." The public goods charge moneys are collected to support cost-effective energy efficiency and conservation activities, public interest research and development not adequately provided by competitive and regulated markets, and renewable energy resources. Existing law establishes the Renewable Resource Trust Fund in the State Treasury and requires that certain moneys collected to support renewable energy resources through the public goods charge are deposited into the fund and authorizes the Energy Commission to expend the moneys pursuant to the Renewable Energy Resources Program. The program states the intent of the Legislature to increase the amount of electricity generated from eligible renewable energy resources per year so that amount equals at least 20% of total retail sales of electricity in California per year by December 31, 2010.

This bill would revise the Renewable Energy Resources Program to state the intent of the Legislature to increase the amount of electricity generated from eligible renewable energy resources per year, so that it equals at least 20% of total retail sales of electricity in California per year by December 31, 2010, ~~25%~~ *23%* of total retail sales of electricity in California per year by December 31, ~~2015~~ *2014, 27% of total retail sales of electricity in California per year by December 31, 2017,* and 33% of total retail sales of electricity in California per year by December 31, 2020. The bill would revise the definitions applicable to the Renewable Energy Resources Program to incorporate the definition of an eligible renewable energy resource from the ~~renewables portfolio standard~~ *RPS* program, would define what is a "new" and "existing" eligible renewable energy resource, would delete certain unneeded defined terms, and would make other conforming changes.

(3) This bill would establish the Energy Planning and Infrastructure Coordinating Committee (EPIC committee), composed of specified members, that would be required to use existing resources and the authority of the state entities represented by the voting members to coordinate the actions of the state, make policy recommendations, and develop a strategic plan to achieve a ~~25%~~ *23%* renewables portfolio standard by December 31, ~~2015~~ *2014, a 27% renewables portfolio standard by December 31, 2017,* and a 33% renewables portfolio standard by December 31, 2020. The bill would require that the strategic plan, among other things, designate and rank renewable energy development (RED) zones with high concentrations of high-quality

renewable energy resources, to designate and rank transmission corridors needed to deliver electricity generated in RED zones to load and any additional electrical transmission and distribution upgrades that are prudent and desirable in order to ensure system reliability, and include a timeline of stages required to meet the 25% and 33% renewables portfolio standard requirements. The bill would authorize the EPIC committee to incorporate in the strategic plan the results reached as a result of the Renewable Energy Transmission Initiative (RETI) collaborative stakeholder planning process initiated as a joint effort among the PUC, Energy Commission, and the Independent ~~Systems~~ *System* Operator. The bill would require the EPIC committee to facilitate coordinated permit and certification review agreements between the PUC, Energy Commission, Department of Fish and Game, State Air Resources Board, State Water Resources Control Board, and other agencies responsible for environmental reviews, including, to the extent feasible, local and federal governmental entities. The bill would require the EPIC committee to direct the Energy Commission to prepare a program environment impact report (PEIR) pursuant to the California Environmental Quality Act (CEQA) for each RED zone and require that the EPIC committee approve the PEIR before the Energy Commission may certify completion of the PEIR.

(4) Existing law requires the Energy Commission to adopt a strategic plan for the state's electrical transmission grid using existing resources, to be included in the integrated energy policy report adopted on November 1, 2005, which identifies and recommends actions required to implement investments needed to ensure reliability, relieve congestion, and to meet future growth in electrical load and generation, including renewable resources, energy efficiency, and other demand reduction measures. Existing law authorizes the Energy Commission to designate a transmission corridor zone on its own motion or by application of a person who plans to construct a high-voltage electric transmission line within the state. Existing law provides that the designation of a transmission corridor shall serve to identify a feasible corridor where a future transmission line can be built that is consistent with the state's needs and objectives as set forth in the strategic plan adopted by the Energy Commission. Existing law provides that the designation of a transmission corridor zone is subject to the requirements of the CEQA and prescribes procedures for the designation of a transmission corridor zone, including publication of the request for designation and request for comments, coordination with federal

agencies and California Native American tribes, informational hearings, and requirements for a proposed decision.

This bill would require the Energy Commission to adopt, and, as needed, update a strategic plan for the state's electrical transmission grid using existing resources, to be included in the next integrated energy policy report, which identifies and recommends actions required to implement investments needed to ensure reliability, relieve congestion, and to meet future growth in electrical load and generation, including achieving the renewables portfolio standard procurement requirements, energy efficiency, and other demand reduction measures. The bill would authorize the Energy Commission to separately adopt a strategic plan to facilitate achieving the renewables portfolio standard requirements. The bill would require that any strategic plan adopted by the Energy Commission be consistent with the strategic plan adopted by the EPIC committee. The bill would make conforming changes to the transmission corridor designations statutes.

(5) The existing federal Energy Policy Act of 2005 requires the federal Secretaries of Agriculture, Commerce, Defense, Energy, and the Interior, in consultation with the Federal Energy Regulatory Commission (FERC), states, and tribal or local units of interested persons, to designate corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities on federal land in the 11 contiguous western states, including California, to perform any environmental reviews that may be required to complete the designation of corridors, and to incorporate the designated corridors into the relevant agency land use and resource management plans or equivalent plans. The Energy Policy Act of 2005 additionally requires the federal secretaries, in consultation with the FERC, affected utility industries, and other interest parties, to establish procedures that ensure that additional corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities on federal land are promptly identified and designated as necessary and to expedite applications to construct or modify oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities within corridors, taking into account prior analysis and environmental reviews.

This bill would require the Energy Commission to confer with the federal secretaries and the FERC to ensure that the transmission corridors designated by the Energy Commission are identified and designated as necessary pursuant to the federal Energy Policy Act of 2005.

(6) The existing Warren-Alquist State Energy Resources Conservation and Development Act grants the Energy Commission the exclusive authority to certify any stationary or floating electrical generating facility using any source of thermal energy, with a generating capacity of 50 megawatts or more, and any facilities appurtenant thereto. This authority extends to any alteration, replacement, or improvement of equipment that results in a 50-megawatt or more increase in the electric generating capacity of an existing thermal powerplant or an increase of 25% in the peak operating voltage or peak kilowatt capacity of an existing electric transmission line. Existing law prohibits the construction of any thermal powerplant or facilities appurtenant thereto or modification of any existing thermal powerplant and appurtenant facility without first obtaining certification from the Energy Commission.

This bill would grant the Energy Commission the exclusive authority to certify an eligible renewable energy resource, as defined, with a generating capacity of 5 megawatts or more, except for a facility for which a building permit application or other request for governmental approval was filed on or before December 31, 2009. The bill would make other conforming changes to the act.

(7) The existing Public Utilities Act prohibits any electrical corporation from beginning the construction of, among other things, a line, plant, or system, or of any extension thereof, without having first obtained from the PUC a certificate that the present or future public convenience and necessity require or will require that construction (certificate of public convenience and necessity). The act requires that the PUC consider certain factors in determining whether to issue a certificate of convenience and necessity, including community values, recreational and park areas, historical and aesthetic values, and influence on the environment, but requires that the issuance of a certificate by the Energy Commission for a thermal powerplant and facilities appurtenant thereto, pursuant to the above-described provisions, is conclusive as to all matters determined thereby when the PUC is determining whether to issue a certificate of public convenience and necessity.

The bill would make the issuance of a certificate by the Energy Commission for an eligible renewable energy resource, pursuant to the above-described provisions, conclusive as to all matters determined thereby when the PUC is determining whether to issue a certificate of public convenience and necessity. The bill would authorize the PUC, with the concurrence of the Division of Ratepayer Advocates, to accept

as a rebuttable presumption, a determination of the ISO, made as part of its transmission planning process, that a transmission project is needed to connect to renewable generation. For any application for a certificate of public convenience and necessity to construct or modify an electrical transmission line, a substantial purpose of which is to access electricity generated by eligible renewable energy resources, the bill would require the PUC to establish a schedule for review of the application and to employ staffing and other resources sufficient to produce a decision on whether to issue the certificate, or refuse to issue it, within 12 months of receiving the completed application.

(8) Under existing law, a violation of the Public Utilities Act or an order or direction of the PUC is a crime. Because some of the provisions of this bill would require an order or other action of the PUC to implement its provisions, and a violation of that order or action would be a crime, the bill would impose a state-mandated local program by creating a new crime. By placing additional requirements upon local publicly owned electric utilities, which are entities of local government, and new requirements upon city and county governments, 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 a specified reason.

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

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

SECTION 1. Article 7.3 (commencing with Section 12078) is added to Chapter 1 of Part 2 of Division 3 of the Government Code, to read:

Article 7.3. Energy Planning and Infrastructure Coordinating Committee

12078. (a) There is hereby established the Energy Planning and Infrastructure Coordinating Committee (EPIC committee), which shall consist of the following members:

(1) The President of the Public Utilities Commission (PUC), or a designee of the PUC, as one chairperson.

(2) The Chair of the State Energy Resources Conservation and Development Commission (Energy Commission), or a designee of the Energy Commission, as one chairperson.

(3) The Secretary of the Resources Agency, or his or her designee.

(4) The Secretary for Environmental Protection, or his or her designee.

(5) The Chair of the Independent System Operator (ISO), or his or her designee.

(6) A designee of the Senate Committee on Rules, who shall be a nonvoting member.

(7) A designee of the Speaker of the Assembly, who shall be a nonvoting member.

(8) Additional ex officio representatives from local and federal government designated by the EPIC committee.

(b) *(1)* The EPIC committee, using the existing resources and authority of the state entities represented by the voting members, shall coordinate the actions of the state, make policy recommendations, and develop a strategic plan to achieve ~~both~~ *all* of the following:

~~(1) A 25~~

(A) A 23 percent renewables portfolio standard by December 31, 2015, pursuant to Chapter 4.5 (commencing with Section 950) of Part 1 of Division 1 of the Public Utilities Code.

(B) A 27 percent renewables portfolio standard by December 31, 2017, pursuant to Chapter 4.5 (commencing with Section 950) of Part 1 of Division 1 of the Public Utilities Code.

~~(2)~~

(C) A 33 percent renewables portfolio standard by December 31, 2020, pursuant to Chapter 4.5 (commencing with Section 950) of Part 1 of Division 1 of the Public Utilities Code.

~~(3)~~

(2) This subdivision does not supersede, nor shall its implementation impair, the administration and oversight of energy efficiency, demand reduction, and conservation programs of, or supervised by, the PUC or the programs of the Energy Commission.

(c) (1) In developing the strategic plan pursuant to subdivision (b), the EPIC committee shall evaluate renewable energy resources

existing within the state and the needs of the electrical transmission and distribution grid to develop and integrate those resources.

(2) The strategic plan shall designate and rank renewable energy development (RED) zones with high concentrations of high-quality renewable energy resources.

(3) The strategic plan shall designate and rank transmission corridors needed to deliver electricity generated in RED zones to load as well as any additional electrical transmission and distribution upgrades that are prudent and desirable in order to ensure system reliability.

(4) The strategic plan shall include a timeline of stages required to meet the renewables portfolio standard requirements of subdivision (b).

(5) The EPIC committee may, where determined to be appropriate, incorporate into the strategic plan the results reached as a result of the Renewable Energy Transmission Initiative (RETI) collaborative stakeholder planning process initiated as a joint effort among the PUC, Energy Commission, and the ISO.

(d) In making policy recommendations pursuant to subdivision (b), the EPIC committee shall do all the following:

(1) Identify and suggest resolutions to regulatory challenges.

(2) Identify and suggest changes to statutes that impede progress in achieving the renewables portfolio standard requirements of subdivision (b).

(3) Identify redundant or duplicative steps in siting and the environmental review process.

(e) The EPIC committee shall facilitate coordinated permit and certificate review agreements between the PUC, Energy Commission, Department of Fish and Game, State Air Resources Board, State Water Resources Control Board, and other agencies responsible for environmental reviews, including, to the extent feasible, local and federal governmental entities.

(f) The EPIC committee shall direct the Energy Commission to prepare a program environmental impact report for each RED zone designated in the strategic plan. The EPIC committee shall approve the program environmental impact report before the Energy Commission may certify the completion of the report.

SEC. 2. Section 25107 of the Public Resources Code is amended to read:

25107. With respect to certification of a site by the commission, "electric transmission line" means any electric powerline carrying electricity from a thermal powerplant, or eligible renewable energy resource with a generating capacity of five megawatts or more, located within the state to a point of junction with any interconnected transmission system. "Electric transmission line" does not include any replacement on the existing site of existing electric powerlines with electric powerlines equivalent to those existing electric powerlines or the placement of new or additional conductors, insulators, or accessories related to those electric powerlines on supporting structures in existence on the effective date of this division or certified pursuant to this division.

SEC. 3. Section 25108.5 is added to the Public Resources Code, to read:

25108.5. "Eligible renewable energy resource" has the same meaning as defined in Section 952 of the Public Utilities Code, except that the commission's certification authority pursuant to Chapter 6 (commencing with Section 25500) extends to those eligible renewable energy resources with a generating capacity of five megawatts or more and does not include those eligible renewable energy resources located within the coastal zone *or projects subject to the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.)*.

SEC. 4. Section 25123 of the Public Resources Code is amended to read:

25123. "Modification of an existing facility" means any alteration, replacement, or improvement of equipment that results in a 50-megawatt or more increase in the electric generating capacity of an existing thermal powerplant or an increase of 25 percent in the peak operating voltage or peak kilowatt capacity of an existing electric transmission line or eligible renewable energy resource with a generating capacity of five megawatts or more.

SEC. 5. Section 25324 of the Public Resources Code is amended to read:

25324. The commission, in consultation with the Public Utilities Commission, the California Independent System Operator, transmission owners, users, and consumers, shall adopt, and, as needed, update, a strategic plan for the state's electric transmission grid using existing resources. The strategic plan shall identify and recommend actions required to implement investments needed to

ensure reliability, relieve congestion, and meet future growth in load and generation, including, but not limited to, achieving the renewables portfolio standard requirements adopted pursuant to Chapter 4.5 (commencing with Section 950) of Part 1 of Division 1 of the Public Utilities Code, energy efficiency, and other demand reduction measures. The plan, and any update to the plan, shall be included in the next integrated energy policy report adopted pursuant to subdivision (a) of Section 25302, except that the commission may separately adopt a strategic plan to facilitate achieving the renewables portfolio standard requirements. Any strategic plan, and any separate strategic plan to facilitate achieving the renewables portfolio standard requirements, adopted by the commission, shall be consistent with the strategic plan adopted by the Energy Planning and Infrastructure Coordinating Committee pursuant to Article 7.3 (commencing with Section 12078) of Chapter 1 of Part 2 of Division 3 of Title 2 of the Government Code.

SEC. 6. Section 25333 of the Public Resources Code is amended to read:

25333. (a) In developing a strategic plan or separate strategic plan to facilitate achieving the renewables portfolio standard requirements pursuant to Section 25324 or considering an application for designation pursuant to this chapter, the commission shall confer with cities and counties, federal agencies, and California Native American tribes to identify appropriate areas within their jurisdictions that may be suitable for a transmission corridor zone. The commission shall, to the extent feasible, coordinate efforts to identify long-term transmission needs of the state with the land use plans of cities, counties, federal agencies, and California Native American tribes.

(b) The commission, pursuant to Section 368 of the Energy Policy Act of 2005 (42 U.S.C. Sec. 15926), shall confer with the Secretaries and the Federal Energy Regulatory Commission, to ensure that the transmission corridors designated by the commission are identified and designated as necessary pursuant to that section.

(c) The commission shall not designate a transmission corridor zone within the jurisdiction of a California Native American tribe without the approval of the California Native American tribe.

SEC. 7. Section 25500 of the Public Resources Code is amended to read:

25500. (a) In accordance with the provisions of this division, and except as otherwise provided in Article 7 (commencing with Section 990) of Chapter 4.5 of Part 1 of Division 1 of the Public Utilities Code, the commission shall have the exclusive power to certify all sites and related facilities in the state, whether a new site and related facility or a change or addition to an existing facility. The issuance of a certificate by the commission shall be in lieu of any permit, certificate, or similar document required by any state, local or regional agency, or federal agency to the extent permitted by federal law, for such use of the site and related facilities, and shall supersede any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law.

(b) After the effective date of this division, no construction of any facility or modification of any existing facility shall be commenced without first obtaining certification for any such site and related facility by the commission, as prescribed in this division.

SEC. 8. Section 25501 of the Public Resources Code is amended to read:

25501. (a) This chapter does not apply to any site or related facility for which the Public Utilities Commission has issued a certificate of public convenience and necessity or which any municipal utility has approved before January 7, 1975.

(b) This chapter does not apply to an eligible renewable energy resource with a generating capacity of five megawatts or more for which a building permit application or other request for governmental approval was filed on or before December 31, 2009.

SEC. 9. Section 25502 of the Public Resources Code is amended to read:

25502. Each person proposing to construct a thermal powerplant, or an eligible renewable energy resource with a generating capacity of five megawatts or more, or electric transmission line on a site shall submit to the commission a notice of intention to file an application for the certification of the site and related facility or facilities. The notice shall be an attempt primarily to determine the suitability of the proposed sites to accommodate the facilities and to determine the general conformity

of the proposed sites and related facilities with standards of the commission and assessments of need adopted pursuant to Sections 25305 to 25308, inclusive. The notice shall be in the form prescribed by the commission and shall be supported by such information as the commission may require.

Any site and related facility once found to be acceptable pursuant to Section 25516 is, and shall continue to be, eligible for consideration in an application for certification without further proceedings required for a notice under this chapter.

SEC. 10. Section 25503 of the Public Resources Code is amended to read:

25503. Each notice of intention to file an application for a thermal powerplant shall contain at least three alternative sites and related facilities, at least one of which shall not be located in whole or in part in the coastal zone. In addition, the alternative sites and related electrical facilities may be proposed from an inventory of sites which have previously been approved by the commission in a notice of intent or may be proposed from sites previously examined. The requirements of this section are not applicable to an application for certification of an eligible renewable energy resource unless specifically required by the commission. An application for certification of an eligible renewable energy resource may include alternative sites and related facilities as part of the application.

SEC. 11. Section 25516 of the Public Resources Code is amended to read:

25516. The approval of the notice by the commission shall be based upon findings pursuant to Section 25514. For a thermal powerplant, the notice shall not be approved unless the commission finds at least two alternative site and related facility proposals considered in the commission's final report as acceptable. If the commission does not find at least two sites and related facilities acceptable, additional sites and related facilities may be proposed by the applicant which shall be considered in the same manner as those proposed in the original notice.

If the commission finds that a good faith effort has been made by the person submitting the notice to find an acceptable alternative site and related facility and that there is only one acceptable site and related facility among those submitted, the commission may approve the notice based on the one site and related facility. If a

notice is approved based on one site and related facility, the commission may require a new notice to be filed to identify acceptable alternative sites and related facilities for the one site and related facility approved unless suitable alternative sites and related facilities have been approved by the commission in previous notice of intention proceedings.

If the commission finds that additional electric generating capacity is needed to accommodate the electric power demand forecast pursuant to subdivision (e) of Section 25305 and, after the commission finds that a good faith effort was made by the person submitting the notice to propose an acceptable site and related facility, it fails to find any proposed site and related facility to be acceptable, the commission shall designate, at the request of and at the expense of the person submitting the notice, a feasible site and related facility for providing the needed electric generating capacity.

SEC. 12. Section 25517 of the Public Resources Code is amended to read:

25517. Except as provided in Section 25501, no construction of any thermal powerplant, eligible renewable energy resource with a generating capacity of five megawatts or more, or electric transmission line shall be commenced by any electric utility without first obtaining certification as prescribed in this division. Any onsite improvements not qualifying as construction may be required to be restored as determined by the commission to be necessary to protect the environment, if certification is denied.

SEC. 13. Section 25531 of the Public Resources Code is amended to read:

25531. (a) The decisions of the commission on any application for certification of a site and related facility are subject to judicial review by the Supreme Court of California.

(b) No new or additional evidence may be introduced upon review and the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the United States Constitution or the California Constitution. The findings and conclusions of the commission on questions of fact are final and are not subject to review, except as provided in

this article. These questions of fact shall include ultimate facts and the findings and conclusions of the commission. A report prepared by, or an approval of, the commission pursuant to Section 25510, 25514, 25516, or 25516.5, or subdivision (b) of Section 25520.5, shall not constitute a decision of the commission subject to judicial review.

(c) Subject to the right of judicial review of decisions of the commission, no court in this state has jurisdiction to hear or determine any case or controversy concerning any matter that was, or could have been, determined in a proceeding before the commission, or to stop or delay the construction or operation of any thermal powerplant, or eligible renewable energy resource with a generating capacity of five megawatts or more, except to enforce compliance with the provisions of a decision of the commission.

(d) Notwithstanding Section 1250.370 of the Code of Civil Procedure:

(1) If the commission requires, pursuant to subdivision (a) of Section 25528, as a condition of certification of any site and related facility, that the applicant acquire development rights, that requirement conclusively establishes the matters referred to in Sections 1240.030 and 1240.220 of the Code of Civil Procedure in any eminent domain proceeding brought by the applicant to acquire the development rights.

(2) If the commission certifies any site and related facility, that certification conclusively establishes the matters referred to in Sections 1240.030 and 1240.220 of the Code of Civil Procedure in any eminent domain proceeding brought to acquire the site and related facility.

(e) No decision of the commission pursuant to Section 25516, 25522, or 25523 shall be found to mandate a specific supply plan for any utility as prohibited by Section 25323.

SEC. 14. Section 25540.6 of the Public Resources Code is amended to read:

25540.6. (a) Notwithstanding any other provision of law, no notice of intention is required, and the commission shall issue its final decision on the application, as specified in Section 25523, within 12 months after the filing of the application for certification of the powerplant and related facility or facilities, or at any later

time as is mutually agreed by the commission and the applicant, for any of the following:

(1) A thermal powerplant which will employ cogeneration technology, a thermal powerplant that will employ natural gas-fired technology, or a solar thermal powerplant.

(2) A modification of an existing facility.

(3) A thermal powerplant, or eligible renewable energy resource with a generating capacity of five megawatts or more, that it is only technologically or economically feasible to site at or near the energy source.

(4) A thermal powerplant with a generating capacity of up to 100 megawatts.

(5) A thermal powerplant, or eligible renewable energy resource with a generating capacity of five megawatts or more, that is designed to develop or demonstrate technologies that have not previously been built or operated on a commercial scale. Such a research, development, or commercial demonstration project may include, but is not limited to, the use of renewable or alternative fuels, improvements in energy conversion efficiency, or the use of advanced pollution control systems. Such a facility may not exceed 300 megawatts unless the commission, by regulation, authorizes a greater capacity. Section 25524 does not apply to such a powerplant and related facility or facilities.

(b) Projects exempted from the notice of intention requirement pursuant to paragraph (1), (4), or (5) of subdivision (a) shall include, in the application for certification, a discussion of the applicant's site selection criteria, any alternative sites that the applicant considered for the project, and the reasons why the applicant chose the proposed site. That discussion shall not be required for cogeneration projects at existing industrial sites. The commission may also accept an application for a noncogeneration project at an existing industrial site without requiring a discussion of site alternatives if the commission finds that the project has a strong relationship to the existing industrial site and that it is therefore reasonable not to analyze alternative sites for the project.

SEC. 15. 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, ~~25~~ *23* percent of total retail sales of electricity in California per year by December 31, ~~2015,~~ *2014, 27 percent of total retail sales of electricity in California per year by December 31, 2017,* and 33 percent of total retail sales of electricity in California per year by December 31, 2020.

SEC. 16. Section 25740.5 of the Public Resources Code is amended to read:

25740.5. (a) The commission shall optimize public investment and ensure that the most cost-effective and efficient investments in renewable energy resources are vigorously pursued.

(b) The commission's long-term goal shall be a fully competitive and self-sustaining supply of electricity generated from renewable sources.

(c) The program objective shall be to increase, in the near term, the quantity of California's electricity generated by eligible renewable energy resources, while protecting system reliability, fostering resource diversity, and obtaining the greatest environmental benefits for California residents.

(d) An additional objective of the program shall be to identify and support emerging renewable technologies in distributed generation applications that have the greatest near-term commercial promise and that merit targeted assistance.

(e) The Legislature recommends allocations among all of the following:

(1) Rebates, buydowns, or equivalent incentives for emerging renewable technologies.

(2) Customer education.

(3) Production incentives for reducing fuel costs, that are confirmed to the satisfaction of the commission, at solid fuel biomass energy facilities in order to provide demonstrable environmental and public benefits, including improved air quality.

(4) Solar thermal generating resources that enhance the environmental value or reliability of the electrical system and that require financial assistance to remain economically viable, as determined by the commission. The commission may require financial disclosure from applicants for purposes of this paragraph.

(5) Specified fuel cell technologies, if the commission makes all of the following findings:

(A) The specified technologies have similar or better air pollutant characteristics than renewable technologies in the report made pursuant to Section 25748.

(B) The specified technologies require financial assistance to become commercially viable by reference to wholesale generation prices.

(C) The specified technologies could contribute significantly to the infrastructure development or other innovation required to meet the long-term objective of a self-sustaining, competitive supply of electricity generated from renewable sources.

(6) Existing wind-generating resources, if the commission finds that the existing wind-generating resources are a cost-effective source of reliable energy and environmental benefits compared with other eligible renewable energy resources, and that the existing wind-generating resources require financial assistance to remain economically viable. The commission may require financial disclosure from applicants for the purposes of this paragraph.

(f) Notwithstanding any other provision of law, moneys collected for renewable energy pursuant to Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code shall be transferred to the Renewable Resource Trust Fund. Moneys collected between January 1, 2007, and January 1, 2012, shall be used for the purposes specified in this chapter.

SEC. 17. Section 25741 of the Public Resources Code is amended to read:

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

(a) "Eligible renewable energy resource" means an eligible renewable energy resource as defined in Section 399.12 of the Public Utilities Code.

(b) "Existing" in reference to an eligible renewable energy resource means a facility that had obtained any necessary permits to operate and was able to generate electricity prior to January 1, 2005.

(c) "New" in reference to an eligible renewable energy resource means a facility that either had not obtained all of the necessary permits to operate or was not able to generate electricity prior to January 1, 2005.

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

(e) "Retail seller" means a "retail seller" as defined in Section 399.12 of the Public Utilities Code.

SEC. 18. Section 25742 of the Public Resources Code is amended to read:

25742. (a) Twenty percent of the funds collected pursuant to the renewable energy public goods charge shall be used for programs that are designed to achieve fully competitive and self-sustaining existing eligible renewable energy resources, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide during the 2007–2011 investment cycle. Eligibility for production incentives under this section shall be limited to those technologies found eligible for funds by the commission pursuant to paragraphs (3), (4), and (6) of subdivision (e) of Section 25740.5.

(b) Any funds used to support eligible renewable energy resources pursuant to this section shall be expended in accordance with the provisions of this chapter.

(c) Facilities that are eligible to receive funding pursuant to this section shall be registered in accordance with criteria developed by the commission and those facilities shall not receive payments for any electricity produced that has any of the following characteristics:

(1) Is sold at monthly average rates equal to, or greater than, the applicable target price, as determined by the commission.

(2) Is used onsite.

(d) (1) Existing facilities generating electricity from biomass energy shall be eligible for funding and otherwise considered an eligible renewable energy resource only if they report to the commission the types and quantities of biomass fuels used.

(2) The commission shall report the types and quantities of biomass fuels used by each facility to the Legislature in the reports prepared pursuant to Section 25748.

(e) Each existing facility seeking an award pursuant to this section shall be evaluated by the commission to determine the

amount of the funds being sought, the cumulative amount of funds the facility has received previously from the commission and other state sources, the value of any past and current federal or state tax credits, the facility's contract price for energy and capacity, the prices received by similar facilities, the market value of the facility, and the likelihood that the award will make the facility competitive and self-sustaining within the 2007–2011 investment cycle. The commission shall use this evaluation to determine the value of an award to the public relative to other renewable energy investment alternatives. The commission shall compile its findings and report them to the Legislature in the reports prepared pursuant to Section 25748.

SEC. 19. Section 387 of the Public Utilities Code is amended to read:

387. (a) Each governing body of a local publicly owned electric utility shall be responsible for implementing and enforcing a renewables portfolio standard that accomplishes all of the following:

(1) Procures at least 20 percent of the electricity delivered to its retail customers from eligible renewable energy resources, as defined in Section 952, by December 31, 2010.

(2) Procures at least ~~25~~ *23* percent of the electricity delivered to its retail customers from eligible renewable energy resources, as defined in Section 952, by December 31, ~~2015~~ *2014*.

(3) Procures at least 27 percent of the electricity delivered to its retail customers from eligible renewable energy resources, as defined in Section 952, by December 31, 2017.

~~(3)~~

(4) Procures at least 33 percent of the electricity delivered to its retail customers from eligible renewable energy resources, as defined in Section 952, by December 31, 2020.

(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, all of the following:

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

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

(c) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 20. Section 399.23 is added to the Public Utilities Code, to read:

~~399.23. This article shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.~~

399.23. The commission shall enforce the requirements of this article until the retail seller procures 20 percent of its retail sales from eligible renewable energy resources. Upon determining that the retail seller is procuring 20 percent of its retail sales from eligible renewable energy resources, the commission shall enforce the requirements of Chapter 4.5 (commencing with Section 950) with respect to that retail seller.

SEC. 21. 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, procure resources from eligible renewable energy resources in an amount sufficient to meet its procurement requirements and goals pursuant to the renewables portfolio standard.

(B) The electrical corporation will 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 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 that each contract was administered in accordance with the terms of the contract, and contract disputes which 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 Division 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 September 24, 2002, 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 September 24, 2002, 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. 22. Chapter 4.5 (commencing with Section 950) is added to Part 1 of Division 1 of the Public Utilities Code, to read:

Chapter 4.5. California Renewables Portfolio Standard Program

Article 1. General Provisions and Definitions

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

(a) California has plentiful and robust natural resources that it has yet to utilize and from which it can derive a sustainable way of life. At the same time, California faces challenges unlike those that it has ever faced. At present, pollution in California's cities threatens human health and despoils the natural beauty of the state. Recent environmental trends portend a future of dramatic change to the state's landscape, with effects on the state's species, habitats, and population centers that are not yet fully understood.

(b) The California Renewables Portfolio Standard Program is established to address those challenges and, with the instruments of policy set forth in this chapter, seeks to accomplish the following statewide policy objectives:

(1) Reducing emissions of greenhouse gases and California's contribution to global warming.

(2) Reducing in-state consumption of nonrenewable fuels in order to improve the public health and air quality throughout the state.

(3) Stimulating sustainable economic development, encouraging innovation in energy technologies, and creating new employment opportunities.

(4) Decreasing California's reliance on imported sources of energy.

(5) Increasing fuel diversity and promoting greater stability and predictability in electricity prices for consumers.

(c) In order to achieve the ambitious targets set forth in this chapter, it will be necessary to facilitate investments in California's electrical transmission infrastructure to ensure system reliability, relieve transmission congestion, and meet future growth in load with eligible renewable energy resources.

(d) California must meet its renewable energy goals while simultaneously ensuring that no interruptions in electrical service occur because of intermittent renewable energy procurement and that future growth in load can be met by procuring renewables long after the goals of this renewables portfolio standard are met.

(e) It is the policy of this state and the intent of the Legislature that the California Renewables Portfolio Standard Program not adversely impact the ability of an electrical corporation to pursue other measures recognized by the State Air Resources Board as necessary to achieve the greenhouse gases emissions reduction

targets established by the California Global Warming Solutions Act of 2006.

952. For purposes of this chapter, the following terms have the following meanings:

(a) (1) "Above-market costs" means the cost of procuring electricity from eligible renewable energy resources that are above the benchmark price adopted by the commission pursuant to Section 963.

(2) "Above-market costs" shall include the costs of all procurement of electricity from all eligible renewable energy resources that the retail seller or local publicly owned electric utility applies toward the renewables portfolio standard procurement requirements, including the costs of contracts approved through the procurement process established pursuant to this chapter, the cost of bilateral contacts for electricity from eligible renewable energy resources, the cost of eligible renewable energy resources owned by the retail seller or local publicly owned electric utility, the cost of procurement of electricity from an eligible renewable energy resource that is a qualifying facility pursuant to the federal Public Utility and Regulatory Policy Act, as amended (16 U.S.C. Sec. 824a-3 et seq.), the cost of any must take obligations under a feed-in tariff with an eligible renewable energy resource for which the retail seller or local publicly owned electric utility obtains the renewable energy credits, and the cost of any unbundled renewable energy credits the retail seller or local publicly owned electric utility purchases to comply with the renewables portfolio standard.

(3) "Above-market costs" shall not include indirect expenses, including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades.

(b) "Below-market costs" means the difference between the benchmark price adopted by the commission pursuant to Section 963 and the cost of procuring electricity from eligible renewable energy resources that is priced below the benchmark price.

~~(a)~~

(c) "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 and that meets the eligibility requirements of Section 953 and subdivision (c) of Section 954.

~~(b)~~

(d) "Delivered" and "delivery," in reference to the electricity generated by an eligible renewable energy resource, mean that the electricity is used to serve end-use retail customers located within the state or is simultaneously scheduled to meet anticipated in-state load.

~~(c)~~

(e) "Eligible renewable energy resource" means an electric generating facility that uses biomass, solar energy, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology, and that meets the general eligibility requirements of Section 953 and, when applicable, the requirements for specific renewable energy sources of Section 954.

~~(d)~~

(f) "Procure" means that a retail seller receives 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 chapter 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 chapter.

~~(e)~~

(g) (1) "Renewable energy credit" means a certificate of proof, issued through the accounting system established by the Energy Commission pursuant to Section ~~975~~ *980*, that ~~either~~ 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 or nondeliverable 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.

~~(f)~~

(h) "Renewable generator" means the owner or operator of an eligible renewable energy resource with the authority to contract for the electricity generated by the facility.

~~(g)~~

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

~~(h)~~

(j) (1) "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:

(A) An electrical corporation.

(B) 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.

(C) An electric service provider, as defined in Section 218.3. The commission shall 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 chapter. 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.

(2) "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.

(k) "Total system annual revenue requirements" means the annual amount of funds that a retail seller or local publicly owned electric utility received from its retail customers in this state,

averaged over the previous three years, to pay its costs, including operating expenses, taxes, and interest paid on debts owed, and a reasonable rate of return.

~~(i)~~

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

953. To be eligible for meeting the renewables portfolio standard, an eligible renewable energy resource shall satisfy one of the following requirements:

(a) The facility is located in the state, or near the border of the state with its first point of connection to the transmission network ~~within this state, and electricity produced by the facility is delivered to an in-state location.~~ *controlled by the Independent System Operator or a local publicly owned electric utility.*

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

(1) It is connected to the transmission network within the WECC service territory.

(2) Electricity produced by the facility is delivered to an in-state location.

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

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

(5) It participates in the accounting system to verify compliance with the renewables portfolio standard by retail sellers, once established by the Energy Commission pursuant to subdivision (a) of Section ~~975~~ *980*.

(6) It commences initial commercial operation after January 1, 2005.

(c) The facility meets the requirements of paragraphs (1), (2), (3), (4), and (5) in subdivision (b), but does not meet the requirements of paragraph (6) because it commences initial operation prior to January 1, 2005, if the facility satisfies either of the following requirements:

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

(2) The facility has been part of the existing baseline of eligible renewable energy resources of the retail seller or local publicly owned electric utility.

954. (a) (1) Except as provided in paragraph (2), a hydroelectric generation facility that is larger than 30 megawatts is not an eligible renewable energy resource.

(2) 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:

(A) 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.

(B) 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 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 exempt from certification because there is no potential for discharge into waters of the United States.

(C) The hydroelectric generation facility 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.

(D) 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.

(b) (1) Except for a conduit hydroelectric generation facility operating pursuant to subdivision (c), a hydroelectric generation

facility of 30 megawatts or less that was in operation prior to January 1, 2006, shall be eligible only if a retail seller or local publicly owned electric utility procured the electricity from the facility as of December 31, 2005.

(2) A hydroelectric generation facility of 30 megawatts or less that becomes operational on or after January 1, 2006, is not eligible if it will cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(3) A small hydroelectric generation facility that satisfies the criteria for an eligible renewable energy resource pursuant to 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.

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

(2) A conduit hydroelectric generation facility of 30 megawatts or less that becomes operational on or after January 1, 2006, is an eligible renewable energy resource unless it will cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(d) A facility engaged in the combustion of municipal solid waste is not an eligible renewable energy resource unless it is located in Stanislaus County and was operational prior to September 26, 1996.

~~(d)~~

(e) A facility engaged in the conversion of municipal solid waste using a noncombustion thermal process to convert solid waste to a clean-burning fuel for the purpose of generating electricity is an eligible renewable energy resource if ~~either it is located in Stanislaus County and was operational prior to September 26, 1996, or~~ it meets all of the following conditions:

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

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

(3) The technology produces no discharges to surface *waters* or groundwaters of the state.

(4) The technology produces no hazardous wastes.

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

(6) The facility is in compliance with all applicable laws, regulations, and ordinances.

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

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

955. A retail seller or local publicly owned electric utility may, for purposes of complying with its renewables portfolio standard procurement requirements, count electricity generated by a renewable energy resource that does not meet the requirements to be an eligible renewable energy resource pursuant to this chapter, if both of the following are true:

(a) The electricity and any associated renewable energy credits are procured pursuant to a contract formed prior to January 1, 2010.

(b) The renewable energy resource was certified by the Energy Commission as an eligible renewable energy resource under Article 16 (commencing with Section 399.11) of Chapter 2.3 prior to January 1, 2010.

~~955.~~

959. This chapter shall become operative on January 1, 2011.

Article 2. Implementation of the Renewables Portfolio Standard for Retail Sellers

~~960. In order to fulfill unmet long-term resource needs, the commission shall establish a renewables portfolio standard requiring each retail seller to increase its procurement of eligible renewable energy resources to accomplish all of the following:~~

~~(a) Procure at least 20 percent of the electricity delivered to its retail customers from eligible renewable energy resources.~~

~~(b) Procure at least 25 percent of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, 2015.~~

~~(c) Procure at least 33 percent of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, 2020.~~

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

(b) The commission shall implement procurement targets for all retail sellers that require a retail seller to increase its total procurement of eligible renewable energy resources as follows:

(1) Procure at least 23 percent of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, 2014.

(2) Procure at least 27 percent of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, 2017.

(3) Procure at least 33 percent of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, 2020.

(c) If a retail seller fails to procure sufficient eligible renewable energy resources in a given year to meet any procurement requirement established pursuant to subdivision (b), the retail seller shall procure additional eligible renewable energy resources in subsequent years to compensate for the shortfall.

962. (a) The commission shall direct each electrical corporation to prepare a renewable energy procurement plan to satisfy its procurement requirements under the renewables portfolio standard. The renewable energy procurement plan shall, to the extent feasible, 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.

~~(b) (1) The renewable energy procurement plan shall include a process that provides criteria~~

(b) The renewable energy procurement plan submitted by an electrical corporation shall include all of the following:

(1) Criteria for the rank ordering and selection of eligible renewable energy resources to comply with the renewables portfolio standard procurement requirement so that ~~each~~ *the* electrical corporation's total renewables portfolio benefits ratepayers. 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. ~~This process shall also consider~~

(2) An analysis of the viability of 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 construction will be delayed, with the result that electricity will not be delivered as required by the contract.

~~(2) The renewable energy procurement plan submitted by an electrical corporation shall include all of the following:~~

~~(A)~~

(3) 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)~~

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

~~(C)~~

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

~~(D) An analysis of the risk that the 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.~~

(6) An analysis of the potential federal and local impediments to the construction and operation of the eligible renewable energy resources.

(7) An analysis of the degree to which the eligible renewable energy resource is likely to fulfill the goals of the renewables portfolio standard program.

(c) Each electrical corporation's renewable energy procurement plan shall rank and express a preference to procure eligible renewable energy resources in the following order:

(1) Electricity and associated renewable energy credits from eligible renewable energy resources located in this state.

(2) Delivered electricity and associated renewable energy credits from eligible renewable energy resources located outside this state, but within the WECC.

~~(c)~~

(d) As part of its procurement plan bid solicitation, each electrical corporation shall offer standard terms and conditions to be used in contracting with renewable generators 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 of the contract 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 chapter, the following information about the agreement shall be disclosed by the commission: the names of the contracting parties, the renewable energy resource type, the project location, and the generating capacity of the project.

~~(d)~~

(e) (1) In soliciting and procuring eligible renewable energy resources, each electrical corporation shall offer contracts of no

less than 10 years' duration, unless the commission approves of a contract of shorter duration.

(2) The commission may authorize a retail seller to enter into a contract of less than 10 years' duration with a renewable generator for the electricity generated by 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.

~~(e)~~

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

~~(f)~~

(g) (1) The commission shall review the results of a solicitation for eligible renewable energy resources submitted for approval by an electrical corporation and accept or reject proposed contracts with the renewable generator 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.

(2) In determining the reasonableness of individual contracts for eligible renewable energy resources, the commission shall not use the benchmark price established pursuant to Section 963 as the basis for determining whether a contract is presumed reasonable or as the sole basis for determining whether a contract is, or is not, just and reasonable.

~~(g) (1) The commission shall provide preference to contracts for renewable energy resources that are from a California supplier.~~

~~(2) For purposes of this paragraph, "California supplier" means any sole proprietorship, partnership, joint venture, corporation, or other business entity that manufactures eligible renewable energy resources in California that are supplied to the renewable generator and that meets either of the following criteria:~~

~~(A) The owners or policymaking officers are domiciled in California and the permanent principal office, or place of business from which the supplier's trade is directed or managed, is located in California.~~

~~(B) A business or corporation, including those owned by, or under common control of, a corporation, that meets all of the following criteria continuously during the five years prior to providing eligible renewable energy resources to a renewable generator:~~

~~(i) Owns and operates a manufacturing facility located in California that builds or manufactures eligible renewable energy resources.~~

~~(ii) Is licensed by the state to conduct business within the state.~~

~~(iii) Employs California residents for work within the state.~~

~~(3) For purposes of qualifying as a California supplier, a distribution or sales management office or facility does not qualify as a manufacturing facility.~~

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

(i) (1) 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 retail seller that is not an electrical corporation that fails to meet renewables procurement requirements pursuant to Section 960.

(2) Notwithstanding paragraph (1), ~~if the~~ *the commission may waive penalties for a retail seller's failure to achieve the procurement requirements established pursuant to subdivision (b) of Section 960, if either of the following conditions are met:*

(A) The commission determines that a retail seller has made a ~~commercially~~ reasonable effort to procure eligible renewable energy resources in an amount sufficient to meet its renewables portfolio standard procurement ~~requirements, the commission may waive penalties for the retail seller's failure to procure at least 20 percent of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, 2010.~~

requirements and, as a result of circumstances beyond the control of the retail seller, it was unable to meet its procurement requirements.

(B) The commission determines that a retail seller has made investments in energy efficiency that has resulted in significantly less demand for electricity.

963. (a) The commission shall provide preference to contracts for eligible renewable energy resources that are from a California supplier.

(b) For purposes of this paragraph, "California supplier" means any sole proprietorship, partnership, joint venture, corporation, or other business entity that manufactures eligible renewable energy resources in California that are supplied to the renewable generator and that meets either of the following criteria:

(1) The owners or policymaking officers are domiciled in California and the permanent principal office, or place of business from which the supplier's trade is directed or managed, is located in California.

(2) A business or corporation, including those owned by, or under common control of, a corporation, that meets all of the following criteria continuously during the five years prior to providing eligible renewable energy resources to a renewable generator:

(A) Owns and operates a manufacturing facility located in California that builds or manufactures eligible renewable energy resources.

(B) Is licensed by the state to conduct business within the state.

(C) Employs California residents for work within the state.

(3) For purposes of qualifying as a California supplier, a distribution or sales management office or facility does not qualify as a manufacturing facility.

~~963.~~

964. (a) (1) The commission shall, by January 1, 2011, and annually thereafter, establish and adopt a benchmark price for electricity generated by an eligible renewable energy resource, for terms corresponding to the length of contracts with renewable generators, in consideration of the following:

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

(B) The value of different deliverability characteristics for electricity, including baseload, peaking, dispatchable, firm, and as-available electricity.

(C) The value of ~~the carbon reductions from the~~ *reducing emissions of greenhouse gases by generating electricity using* eligible renewable energy resources and the value of any other emissions reductions that are not already accounted for pursuant to Section 40709 of the Health and Safety Code.

(D) The value of increasing the diversity of the statewide supply of sources of energy for generating electricity.

(2) The benchmark price shall not include any indirect expenses, including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades.

~~(b) The commission shall, by January 1, 2011, for each electrical corporation, establish a limitation on the total costs expended above the benchmark prices determined in subdivision (a) for the procurement of eligible renewable energy resources to achieve the procurement targets established pursuant to this article. The cost limitation shall not exceed 5 percent of the electrical corporation's revenue requirement.~~

~~(c) If the cost limitation established by the commission for an electrical corporation pursuant to subdivision (b) is insufficient to support the total costs expended above the benchmark prices determined pursuant to subdivision (a) for the procurement of eligible renewable energy resources, 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 benchmark prices.~~

(b) (1) A retail seller shall not be required to procure additional electricity generated by eligible renewable energy resources pursuant to Section 960, if the net annualized costs expended above the benchmark prices adopted by the commission pursuant to subdivision (a) exceed 5 percent of the retail seller's total system annual revenue requirement.

(2) The net annualized costs expended above the benchmark prices shall be calculated by determining the sum of all above-market costs and reducing that amount by the sum of all below-market costs of procurement of electricity from eligible renewable energy resources.

~~(d)~~

(c) An electrical corporation may voluntarily propose to procure eligible renewable energy resources at above the benchmark price that are not counted toward the cost limitation. Any voluntary procurement above the benchmark price shall be subject to commission approval prior to the expense being recovered in rates.

~~964.~~

965. (a) Subject to the provisions of this section, the requirements of this chapter 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 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 Article 4 (commencing with Section ~~975)~~ *980)*.

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

(c) The commission shall determine the 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 this chapter, 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 chapter, at or below the benchmark price determined by the commission pursuant to Section ~~963~~ *964*, are reasonable 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.

966. (a) The commission, in consultation with the Energy Commission and the Independent System Operator, shall report to the Governor and the Legislature by January 1, 2012, and by January 1 of each even-numbered year thereafter, on the state's progress toward achieving a statewide 33 percent renewables portfolio standard. The report shall include all of the following:

(1) The current status and progress made during the prior two years toward procurement of eligible renewable energy resources located in the state as a percentage of retail sales, including the status of siting and permitting eligible renewable resources by federal, state, and local agencies, procurement of eligible renewable energy resources located outside the state and within the WECC, and procurement of unbundled renewable energy credits.

(2) The current status and progress made during the prior two years toward construction of, and upgrades to, transmission and distribution facilities and other electrical system components to interconnect eligible renewable energy resources and to deliver the electricity generated by those resources to load, including the status of planning, siting, and permitting transmission facilities by federal, state, and local agencies.

(3) The current status and progress made during the prior two years in integrating intermittent eligible renewable energy resources into the total electricity supply mix, including frequency control, balancing load and generation, ramping, utilization of smart grid and storage technologies, and the status of siting and permitting load following resources by federal, state, and local agencies.

(4) The total costs of achieving progress toward a statewide 33 percent renewables portfolio standard, including indirect costs,

including, but not limited to, integrating and delivering eligible renewable resources, and the cost per ton of reducing emissions of greenhouse gases and the amount and rate of reductions achieved.

(5) Recommendations to remove impediments to making progress toward achieving a statewide 33 percent renewables portfolio standard, including adjustments to total cost limitations.

(6) Recommendations to achieve greater cost-effective reductions in emissions of greenhouse gases through energy efficiency and demand response, including use of efficient combined heat and power systems, or other strategies.

(b) The commission may include the information required by this section with the report prepared pursuant to Section 747.

~~965.~~

967. (a) The commission may authorize a procurement entity to enter into contracts on behalf of customers of a retail seller for electricity generated by eligible renewable energy resources to meet the retail seller's renewables portfolio standard procurement requirements. The commission may not require any person or corporation to act as a procurement entity or require any party to purchase electricity generated by eligible renewable energy resources from a procurement entity.

(b) The procurement entity shall, subject to review and approval by the commission, 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 electricity generated by eligible renewable energy resources.

~~966.~~

968. 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.

Article 3. Implementation of the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities

970. (a) In order to fulfill unmet long-term resource needs, each governing body of a local publicly owned electric utility shall ~~be responsible for implementing and enforcing a renewables portfolio standard that accomplishes all of the following:~~

~~(1) Procures at least 20 percent of the electricity delivered to its retail customers from eligible renewable energy resources.~~

~~(2) Procures at least 25 percent of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, 2015.~~

~~(3) Procures at least 33 percent of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, 2020.~~ *establish a renewables portfolio standard requiring the utility to procure a minimum quantity of electricity generated by eligible renewable energy resources as a specified percentage of total kilowatthours sold to the utility's retail end-use customers, each calendar year, to achieve the targets of subdivision (b).*

(b) The governing board shall implement procurement targets for a local publicly owned electric utility that require the utility to increase its total procurement of eligible renewable energy resources as follows:

(1) Procure at least 23 percent of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, 2014.

(2) Procure at least 27 percent of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, 2017.

(3) Procure at least 33 percent of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, 2020.

(c) If a local publicly owned electric utility fails to procure sufficient eligible renewable energy resources in a given year to meet any target established pursuant to subdivision (b), the utility shall procure additional eligible renewable energy resources in subsequent years to compensate for the shortfall.

~~(b)~~

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

~~(c) A local publicly owned electric utility shall retain discretion over the manner employed by the utility to meet the renewables portfolio standard established pursuant to this section. The discretionary authority of a local publicly owned electric utility includes, but is not limited to, all of the following:~~

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

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

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

~~(d)~~

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

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

(3) Upon distribution to its governing body of information related to its renewable energy resources procurement status and future plans, for its consideration at a noticed public meeting, the local publicly owned electric utility shall make that information

available to the public and shall provide the Energy Commission with an electronic copy of the documents for posting on the Energy Commission's Internet Web site. This requirement is satisfied if the local publicly owned electric utility provides the uniform resource locator (URL) that links to the documents or information regarding other manners of access to the documents.

~~(e)~~

(c) Within 30 business days after a local publicly owned electric utility executes a renewable energy resources procurement contract, the local publicly owned electric utility shall submit, to the Energy Commission, documentation that includes all of the following:

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

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

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

~~(f) A local publicly owned electric utility may use renewable energy credits to meet its renewables portfolio standard procurement requirements to the same extent and under the same circumstances as a retail seller is authorized to use renewable energy credits to meet the retail seller's renewables portfolio standard procurement requirements.~~

~~(g)~~

(d) Each local publicly owned electric utility shall report, on an annual basis, to its customers and to the Energy 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 energy source.

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

972. A local publicly owned electric utility may use renewable energy credits to meet its renewables portfolio standard procurement requirements to the same extent and under the same circumstances as a retail seller is authorized to use renewable energy credits to meet the retail seller's renewables portfolio standard procurement requirements.

973. A local publicly owned electric utility shall retain discretion over the manner employed by the utility to meet the renewables portfolio standard established pursuant to this section. The discretionary authority of a local publicly owned electric utility includes, but is not limited to, all of the following:

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

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

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

~~(h)~~

974. Upon a determination by the Energy Commission that a local publicly owned electric utility has failed to comply with this article, the State Air Resources Board may impose penalties pursuant to Part 6 (commencing with Section 38580) of Division 25.5 of the Health and Safety Code. *If the State Air Resources Board has imposed a penalty upon a local publicly owned electric utility for the utility's failure to meet a renewable energy resources 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), the board shall not impose an additional penalty pursuant to this section for the utility's failure to comply with the procurement requirements of this article.*

975. (a) A local publicly owned electric utility shall not be required to procure additional eligible renewable energy resources in any three-year procurement period in which net annualized costs expended above the benchmark prices exceed 5 percent of the local publicly owned electric utility's total system annual revenue requirement.

(b) The net annualized costs expended above the benchmark prices shall be calculated by determining the sum of all above-market costs and reducing that amount by the sum of all below-market costs of procurement of electricity from eligible renewable energy resources.

~~971.~~

979. *(a)* A public utility district that receives all of its electricity pursuant to a preference right adopted and authorized by the United States Congress pursuant to Section 4 of the Trinity River Division Act of August 12, 1955 (Public Law 84-386) shall be in compliance with the renewable energy procurement requirements of this chapter.

(b) 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 control area located outside this state within the WECC, an eligible renewable energy resource includes a facility that is located outside California, if the facility 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 and is not used to fulfill renewable energy procurement requirements in other states.

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

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

Article 4. Duties of the Energy Commission in Implementing the Renewables Portfolio Standard

~~975.~~

980. (a) The Energy Commission shall do all of the following:

(1) Design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers and local publicly owned electric utilities, to ensure that electricity generated by an eligible renewable energy resource is counted only once for the purpose of compliance with regulatory or legal

requirements of this state or any other state, for verifying retail product claims in this state or any other state, or to certify renewable energy credits. 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, 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.

(2) Certify eligible renewable energy resources that it determines meet the criteria described in subdivision (c) of Section 952, the requirements of Section 953, and when applicable, the requirements of Section 954.

(3) 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 WECC in the development of this system. No electricity generated by an eligible renewable energy resource attributable to the use of nonrenewable fuels, beyond a de minimus quantity, as determined by the Energy Commission, shall result in the creation of a renewable energy credit.

(b) The Energy Commission may, as part of the integrated energy policy report adopted pursuant to Chapter 4 (commencing with Section 25300) of Division 15 of the Public Resources Code, recommend additional technologies and resources to be included in the definition of an eligible renewable energy resource for purposes of this chapter.

(c) The Energy Commission shall implement this article so that it is compatible with, and does not preclude achievement of, the combined heat and power system electricity generation objectives identified by the State Air Resources Board in its scoping plan implementing the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the

Health and Safety Code), including maintaining existing levels of electrical generation from combined heat and power systems and the installation of an additional 4,000 megawatts of electrical generation from combined heat and power systems in order to meet goals for reducing emissions of greenhouse gases.

Article 5. Renewable Energy Credits

~~980.~~

990. (a) Subject to the conditions of this article, a retail seller or local publicly owned electric utility may use renewable energy credits from eligible renewable energy resources that are certified by the Energy Commission pursuant to Article 4, to comply with the renewables portfolio standard procurement requirements.

(b) No retail seller or local publicly owned electric utility shall use renewable energy credits to comply with the renewables portfolio standard procurement requirements pursuant to ~~subdivision (a) or (b) until the commission and the Energy Commission find that the tracking system established pursuant to paragraph (3) of subdivision (a) of Section 975, is operational, is~~ *subdivision (a) unless those renewable energy credits are tracked through a system, established pursuant to paragraph (3) of subdivision (a) of Section 980, that is* capable of independently verifying the electricity generated by an eligible renewable energy resource~~,~~ and can ensure that renewable energy credits shall not be double counted for the purposes of compliance with regulatory or legal requirements of this state or any other state, or for verifying retail product claims in this state or any other state.

(c) A renewable energy credit shall be counted only once for the purposes of compliance with regulatory or legal requirements of this state or any other state, or for verifying retail product claims in this state or any other state, except that a renewable energy credit may be used by a retail seller or local publicly owned electric utility for both compliance with any federal renewable energy portfolio requirement and for compliance with the renewables portfolio standard pursuant to this chapter.

(d) A renewable energy credit shall either be used for purposes of compliance with regulatory or legal requirements of this state or any other state, or shall expire within 18 months of the date of

~~purchase by the retail seller or local publicly owned utility.~~ *its creation.*

(e) 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 paragraph (3) of subdivision (a) of Section ~~975~~ *980* and included in the baseline quantity of eligible renewable energy resources of a purchasing retail seller pursuant to Article 2, or a local publicly owned electric utility pursuant to Article 3.

(f) No renewable energy credits shall be created for electricity generated under any electricity purchase contract with a qualifying facility executed after January 1, 2005, pursuant to the federal Public Utility Regulatory Policies Act of 1978 (Public Law 95-617). Deliveries under the electricity purchase contracts shall be tracked through the accounting system described in paragraph (3) of subdivision (a) of Section ~~975~~ *980* and count toward the renewables portfolio standard procurement requirements of the purchasing retail seller or local publicly owned electric utility.

(g) The commission shall allow an electrical corporation to recover in rates the reasonable costs of purchasing renewable energy credits to meet its renewables portfolio standard procurement requirements.

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

SEC. 23. Section 1002 of the Public Utilities Code is amended to read:

1002. (a) The commission, as a basis for granting any certificate pursuant to Section 1001 shall give consideration to the following factors:

(1) Community values.

(2) Recreational and park areas.

(3) Historical and aesthetic values.

(4) Influence on environment, except that in the case of any line, plant, or system or extension thereof located in another state that will be subject to environmental impact review pursuant to

the National Environmental Policy Act of 1969 (Chapter 55 (commencing with Section 4321) of Title 42 of the United States Code) or similar state laws in the other state, the commission shall not consider influence on the environment unless any emissions or discharges therefrom would have a significant influence on the environment of this state.

(b) With respect to any thermal powerplant, eligible renewable energy resource with a generating capacity of five megawatts or more, or electrical transmission line for which a certificate is required pursuant to the provisions of Division 15 (commencing with Section 25000) of the Public Resources Code, no certificate of public convenience and necessity shall be granted pursuant to Section 1001 without that other certificate having been obtained first, and the decision granting that other certificate shall be conclusive as to all matters determined thereby and shall take the place of the requirement for consideration by the commission of the four factors specified in subdivision (a) of this section.

(c) The commission, with the concurrence of the Division of Ratepayer Advocates may, accept as a rebuttable presumption, a determination of the Independent System Operator, made as part of its transmission planning process, that a transmission project is needed to connect to renewable generation.

SEC. 24. Section 1004.5 is added to the Public Utilities Code, to read:

1004.5. For any application for a certificate to construct or modify an electrical transmission line, a substantial purpose of which is to access electricity generated by eligible renewable energy resources, the commission shall establish a schedule for review of the application and employ staffing and other resources sufficient to produce a decision on whether to issue the certificate, or refuse to issue it, within 12 months of receiving the completed application.

SEC. 25. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because certain costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within

the meaning of Section 6 of Article XIII B of the California Constitution.

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

O