

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 30, 2009

To: The Commission
(Meeting of May 7, 2009)

From: Pamela Loomis, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **SB 805 (Wright) - Energy: renewable energy resources:
procurement.
As Amended April 14, 2009**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT w/AMENDMENTS

SUMMARY OF BILL:

This bill increases the renewables portfolio standard (RPS) target from 20% in 2010 to 33% in 2020, and makes several changes to the program. Most notably, this bill: 1) keeps the Market Price Referent (MPR) and creates a program cost limitation of 3% of a utility's annual revenue requirement; 2) allows WECC-wide renewables to be eligible, but directs that in-state renewables shall be preferred; 3) allows "unbundled" renewable energy credits (RECs) from the Western Electricity Coordinating Council (WECC) to meet up to 25% of RPS requirements; and 4) allows the California Public Utilities Commission (Commission or CPUC) to revise the RPS target as needed to ensure ratepayers continue to receive reliable and reasonably priced electrical service. This bill also requires the CPUC to report to the Legislature every two years, starting January 1, 2012, on the progress and status of procurement activities, the identification of barriers, and policy recommendations for achieving the RPS goals.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

The Commission generally supports this bill's approach to RPS-reform. The CPUC supports the advancement of the renewable portfolio standard beyond 20% by 2010 towards a goal of 33% by 2020. Indeed, the Commission considers increased procurement from renewable sources to be a critical element of meeting AB 32's emission reduction goals and greening California's power production and consumption.

SUMMARY OF SUGGESTED AMENDMENTS:

See Analysis below.

DIVISION ANALYSIS (Energy Division):

This bill increases the renewables portfolio standard (RPS) target from 20% in 2010 to 33% in 2020 and makes several changes to the program, such as:

1. developing a methodology for coordinating RPS Plans and long-term procurement plans;
 2. modifying the methodology that utilities use to rank renewable energy bids in order to select the projects for negotiation;
 3. modifying flexible compliance rules;
 4. eliminating penalty provisions;
 5. reporting to the Legislature every two years on the progress and status of RPS procurement activities;
 6. creating a new “out” for utilities to waive RPS procurement requirements if renewable energy prices are not competitive;
 7. allowing WECC-wide renewables to be eligible, but directing that in-state renewables shall be preferred;
 8. allowing “unbundled” renewable energy credits from the WECC to meet up to 25% of RPS requirements;
 9. keeping the market price referent and creates a cost limitation of 3% of a utility’s annual revenue requirement as the cost containment mechanism; and
 10. allowing CPUC to revise the RPS target as needed to ensure ratepayers continue to receive reliable and reasonably priced electrical service.
- Implementing 1 and 2 will improve the RPS program. In fact, the CPUC is already working on developing more robust procurement planning and RPS bid evaluation methodologies, in R.08-02-007 and R.08-08-009 respectively. We recognize that it is important to modify the RPS statute to reflect this reform. Implementing point 5 will complement these new processes because it will allow the CPUC to report to the Legislature on the success and barriers to the program, which could facilitate making appropriate and timely changes to RPS statute.
 - It is unrealistic to require the same RPS rules for large and small retail sellers. They are all are not at the same renewable baseline, so requiring the same RPS targets may be unreasonable. Plus, it has been complex to implement the RPS program for the very small utilities - because of their small load, they cannot sign contracts for the output of a new large renewable energy facility. Thus, this bill should consider eliminating the RPS mandates for retail sellers that sell less than 500 GWh in every year from 2010 through 2020.

- **25% cap on the use of RECs**

SB 805 would allow up to 25% of a retail seller's renewable procurement to be from "unbundled" renewable energy credits (RECs) that are located within the WECC.

The CPUC would prefer keeping existing statute (PU Code §399.16(a)(7)) that gives the CPUC authority to determine the appropriate cap on tradable REC transactions to meet the RPS targets. The CPUC should be able to develop an appropriate REC cap within the procurement planning process, taking into account the costs of different procurement options, legislative policy goals, impacts on system reliability, and effects of procurement options on the GHG profile of an IOU's portfolio.

The CPUC supports the use of tradable RECs and the participation of out-of-state RECs with no delivery requirement for the California's RPS program. This will provide retail sellers with more procurement flexibility and options, and will reduce unnecessary transaction costs associated with firming and shaping out-of-state energy. Eliminating the delivery requirement for RECs will reduce transaction costs because "firming and shaping" will no longer be required. The transaction costs of "firming and shaping" negate the primary benefits of RECs: contracting flexibility and lower RPS costs. This approach also promotes the greenhouse gas (GHG) reduction goals of the Western Region as a whole, mitigates in-state RPS costs, and provides the state more options for reaching its RPS goals.

CPUC suggests some clarifications and amendments in this area:

- Several sections incorrectly use the word "unbundled". As defined by the CPUC, "unbundled REC" means that a retail seller buys a REC but not the underlying energy from a generator and then the retail seller must use the REC for its RPS compliance and can not re-sell the REC. On the other hand, "tradable REC" means that a retail seller buys a REC, but not the underlying energy, from a generator and that then the retail seller can trade the REC to other entities or use it for its own compliance. Under both situations, the energy would have to meet the statutory delivery rules, which currently require the energy to be delivered to California (and firmed and shaped if it is intermittent out-of-state energy). We think that SB 805 intended to say that the energy underlying the RECs would not have to be delivered to California. Thus, the CPUC recommends clarifying and modifying the language as follows:

A retail seller may meet up to 25 percent of its renewables portfolio standard procurement requirements with ~~unbundled~~ renewable energy credits from ~~eligible~~ renewable energy resources within the region of the WECC *that meet all the criteria for eligibility except the deliverability requirement of Public Resources Code 25741(b)(2)(B)(iii).*

- Because SB 805 eliminates the delivery requirement for RECs, existing PU Code §399.16(a)(3) that requires delivery should be eliminated.

- Consistent with the above suggested language, the CPUC recommends modifying the definition of “procure” in PU Code §399.12(d) as follows:

“Procure” means that a retail seller or local publicly owned electric utility *contracts for renewable energy credits* or receives delivered electricity generated by an eligible renewable energy resource that it owns or for which it has entered into an electricity purchase agreement.

- It is unnecessary to repeat the new RECs usage limit in two sections (PU Code §399.14(a)(4) and §399.14(b)). The CPUC recommends eliminating the provision from §399.14(a)(4).

- **Procurement Plans and Bid Evaluation**

This bill would require the RPS annual Procurement Plans and the utility bid evaluation methodology to be more robust by requiring them to be consistent with the IOUs’ general procurement planning process.

To ensure that 33% is achieved in a timely and cost-effective manner that doesn’t undermine system reliability, IOUs will, going forward, need to better align renewable procurement with transmission planning and fossil procurement. In fact, the CPUC has two open proceedings that are actively addressing this issue (R.08-08-009, R.08-02-007), as authorized by existing PU Code §399.14(a)(1). Further, pursuant to PU Code §454.5, the CPUC has existing authority to approve IOU Procurement Plans and contracts that comply with the Plan. And, pursuant to PU Code §701.1, the CPUC has an obligation to ensure that the principal goal of electric utilities’ resource planning and investment is to minimize the cost to society of reliable electric services, and to improve the environment and to encourage renewable energy resources.

Consequently, the CPUC supports the change that requires consistency between RPS Plans and general procurement planning because it will enable the IOUs to understand which renewable energy projects fit their portfolio on a cost, system reliability and environmental quality basis. This approach will also provide the CPUC with the information necessary to determine whether the total cost of the IOU’s proposed RPS procurement is reasonable, if the utility is pursuing a procurement strategy that minimizes RPS costs and results in viable projects, and whether the utilities’ inability to achieve a specific RPS procurement target is due to a market or regulatory barrier(s) beyond the utilities control.

These new provisions in SB 805 also enable the RPS flexible compliance and cost containment rules to be simplified as well as be more robust. However, the bill does not acknowledge this and instead maintains, as well as adds to, the complex and inflexible RPS cost containment rules that exist. We suggest greater coordination between RPS procurement planning, bid evaluation, compliance rules and cost

containment - See sections below on cost containment and RPS compliance rules for details.

- **Preference for California based projects**

PU Code §399.14(a)(5) needs legal analysis to assess the legality relative to the Commerce Clause of the U.S. Constitution for the requirement that IOUs “shall” give preference to California-based projects that meet certain criteria, such as providing benefits to poor communities.

- **Cost Containment Mechanism**

SB 805 would maintain the market price referent (MPR) and create a cost limitation of 3% of a utility’s annual revenue requirement, which would essentially cap the amount by which renewable energy contract costs can exceed those of gas-fired alternatives. The bill additionally adds language to authorize the CPUC to waive the 20% and 33% RPS mandates if the CPUC determines that “despite good faith best efforts by a retail seller to procure eligible renewable energy resources, that there are insufficient eligible renewable energy resources at competitive prices to enable the retail seller to meet” its RPS mandates.

The CPUC is committed to cost containment within the RPS program. Pursuant to PU Code §701.1, the CPUC has an obligation to ensure that the principal goal of electric utilities' resource planning and investment is to minimize the cost to society of reliable electric services, to improve the environment, and to encourage renewable energy resources. Further, pursuant to existing PU Code §454.5, the CPUC has the authority to approve IOU procurement plans and contracts that comply with the plan.

However, the MPR is an ineffective and inequitable tool for determining whether RPS program costs are reasonable.

- The MPR may distort bid prices – observed behavior seems to indicate that low-cost resources bid up to MPR and high-cost resources bid down, despite inability to build at those prices (and then they return for approval of higher costs later)
- With 33% RPS and AB 32 mandates, the marginal MWh of energy procurement is no longer fossil energy. To meet these mandates, every procurement decision must be a renewable one and fossil energy will only be built if needed for system reliability. Comparing renewables to a fossil fueled energy source does not reflect the present context of climate policy, in which the more appropriate comparison may be between renewable energy costs and other GHG reduction measures.
- Maintaining the MPR and cost limitation undermines the CPUC’s ability to develop an RPS cost minimization strategy within the procurement planning process. The current cost limitation does not consider whether there are more cost-effective renewable procurement options for meeting a 33% RPS besides

renewable energy contracts (e.g. utility-owned generation or a feed-in tariff for rooftop solar PV).

- Having the MPR prevents the CPUC from assessing whether a proposed RPS contract, and its impact on an IOU's portfolio need for transmission and system reliability, is cost-effective relative to an IOU's other renewable and non-renewable options for meeting a 33% RPS or AB 32 goals.

To replace the MPR, the CPUC proposes two alternatives below. Each alternative would enable the CPUC to develop both RPS cost minimization and cost containment strategies. Cost minimization is achieved by identifying a least-cost best-fit renewable procurement strategy, on a statewide and utility-specific basis, to achieve efficiently and effectively the legislative policy goals of a 33% RPS. Cost containment is achieved by determining the appropriate level of total renewable cost, relative to other non-renewable options, on a statewide and utility-specific basis. Under either scenario, individual RPS contracts should be reviewed based on whether they are compliant with an IOU's procurement plan and whether their price is reasonable. Going forward, it is irrelevant to compare an RPS contract price to the cost of building a natural gas plant. Instead, any renewable contract should be approved if (1) the price is reasonable relative to bid prices of a similar technology, (2) the contract was procured pursuant to a CPUC-approved cost minimization strategy, and (3) if relevant, the cost cap has not been exceeded.

- It is important to note that if SB 805's proposed sections about the MPR and cost limitation were eliminated, the bill would provide nearly sufficient language to implement new robust RPS cost minimization and cost containment mechanisms. As discussed in previous sections, the bill proposes language to require RPS procurement plans to be consistent with general procurement planning and to consider the rate impact, system reliability and environmental and economic benefits of an IOU's proposed RPS procurement. This is consistent with the work that the CPUC is pursuing on procurement planning in R.08-08-009 and R.08-02-007, and would enable the CPUC to consider the total cost impact of RPS procurement to ratepayers and the IOUs' proposed RPS procurement plans in light of whether they are in line with the state's GHG reduction goals.
- The CPUC recommends that PU Code Sections 399.14(a)(2)(A) and 399.15(d) relating to the MPR and cost limitation should be eliminated as of January 1, 2012. At that time, CPUC's proposed alternatives should be adopted. We present two alternatives to adopt as of January 1, 2012:
- **Alternative 1:** Modify PU Code §399.15(b)(1) as follows:
Each retail seller shall, pursuant to subdivision (a), increase its total procurement of eligible renewable energy resources ~~by at least an additional 1 percent of retail sales per year~~ so that 20 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010, *and 33 percent no later than*

December 31, 2020, if the commission determines that achieving these targets will result in just and reasonable rates and if the least-cost resource mix that would achieve a 33 percent renewable energy target would not undermine the state's ability to achieve long-term greenhouse goals.

Given the CPUC's existing authorities in PU Codes §701.1 and §454.5, the CPUC has an obligation to ensure just and reasonable electric rates, system reliability and to approve IOU procurement plans consistent with statutory procurement goals. Based on these authorities, this alternative would enable the CPUC to institute compliance rules and cost containment that lead to least-cost procurement strategies and that are flexible enough to adjust to market and regulatory realities of renewable procurement. To complement this approach, we support a bi-annual reporting requirement for the CPUC so the Legislature has all pertinent information at its disposal to adjust the RPS targets if necessary.

- **Alternative 2:** The RPS program costs are limited by a total revenue requirement. Replace PU Code §399.14(a)(2)(A) as follows:

Develop a cost containment mechanism in the form of a RPS revenue requirement for each electrical corporation to satisfy its obligations under the renewable portfolio standard given the goals set forth in Section 399.11. The commission shall also develop a cost minimization strategy to achieve, on a statewide basis and/or specific to each electrical corporation, the goals of this section and the state's long-term greenhouse gas emissions reduction goals.

As opposed to the MPR mechanism, this approach would consider all costs associated with increasing renewable energy in California (e.g. transmission and integration costs). The CPUC can use its procurement planning process to develop an appropriate cost cap as well as cost minimization procurement strategy that each IOU would pursue to meet RPS targets within the cost cap. If the Legislature wants to fix the revenue requirement in statute, it could require that the CPUC report by January 1, 2011 regarding the total all-in revenue requirement necessary to achieve 33% RPS by 2020. The CPUC could present alternatives based on the timing of reaching a 33% RPS, the GHG impact of different RPS resource mixes and the potential for market transformation of the energy sector. Using this information, the Legislature could establish a well-informed RPS revenue cap that considers the program's potential impact on rates, AB 32, and system reliability.

In developing the revenue requirement, it is important to consider the Legislature's priorities. The total costs of the program depend on whether meeting the 33% RPS in 2020 is the priority or whether other benefits of the RPS program such as in-state economic development, GHG reduction and long-term transformation of the electric sector take preference. Clearly, different renewable technologies would be pursued depending on the Legislature's priorities, particularly because some priorities could be mutually exclusive. For example, if

the priority is in-state economic development, the IOUs must pursue in-state solar thermal aggressively, yet because of the long lead time required to plan and build new transmission, we might need more time to reach 33% in 2020.

To complement this approach, we support a bi-annual reporting requirement for the CPUC so the Legislature has all pertinent information at its disposal to adjust the RPS target or revenue requirement if necessary.

- **Modification of Compliance Rules and RPS targets**

SB 805 maintains and adds to the existing flexible compliance rules. New rules include a compliance waiver if the CPUC determines that a retail seller put forth “best faith best efforts” to procure renewables, but there were insufficient resources available at competitive prices (PU Code §399.14(a)(2)(C)(i)).

The CPUC generally supports the idea of the proposed price waiver, but we think that it is undermined by, and not reconcilable with, the MPR and cost limitation provisions. Specifically, the bill proposes that above-MPR RPS costs are limited by a fund of money called the cost limitation, and if those costs are exhausted then the IOU no longer has to procure RPS contracts above the MPR. Yet, proposed PU Code §399.14(a)(2)(C)(i) says that if RPS contract prices are not “competitive,” the 33% RPS target is waived. It is unclear how both provisions could be implemented for the same program. The complexity of implementing both provisions could be avoided by using procurement planning to authorize a revenue requirement for the RPS program, above which the IOUs are not required to pursue renewable energy to meet their 33% RPS mandate.

Instead of those proposed in the bill, the CPUC proposes the following compliance rules, which are consistent with SB 805’s proposals to address the market realities associated with long lead times to build renewable energy projects and which address situations when market or regulatory barrier(s) legitimately prevent utilities from attaining targets, despite good faith efforts:

- 25% by 2015 and 33% by 2020 RPS targets
- CPUC establishes annual targets for each IOU in the IOU’s annual RPS procurement plans that recognize the market and regulatory constraints that might impede renewable development
- No statutory flexible compliance rules
- IOUs can be penalized in 2015 and 2020 for non-compliance
- CPUC/CARB send joint report to Legislature in 2015 regarding the viability of 33% by 2020 target
 - Report shall discuss the impact of different RPS procurement strategies, from a cost, risk and timing perspective, on the state’s ability to achieve its 2020 GHG emissions reductions goals

PROGRAM BACKGROUND:

- The RPS program was adopted in SB 1078 (2002), and subsequently modified by SB 107 (2006) and SB 1036 (2007). The CPUC is statutorily responsible for 1) requiring each utility to submit an RPS Procurement Plan, 2) adopting a pricing benchmark to evaluate RPS contracts, 3) adopting a process that utilities must use to evaluate renewable energy projects bid into their solicitations, 4) adopting RPS compliance rules, 5) reviewing and approving or rejecting utilities' RPS contracts, and 6) reporting to the Legislature, on a quarterly basis, on the RPS program. The CPUC has adopted approximately 30 decisions to implement these aspects of the RPS program and has approved over 110 RPS contracts for nearly 7,000 megawatts (over 800 megawatts of which have already begun delivering RPS-eligible energy).
- The CPUC currently implements the 20% by 2010 renewable portfolio standard (RPS) program. Each year, the utilities each submit an RPS Procurement Plan, which includes, in part, a description of their renewable energy procurement supply and demand and a description of how they will evaluate RPS bids. The CPUC evaluates and approves each Plan. Then, the utilities rank each bid, select which bids to negotiate with, and execute a number of contracts. The CPUC evaluates each executed contract in light of its compliance with the utility's Plan and other CPUC decisions, the reasonableness of the contract price, and the viability of the project. In order to contain the costs of the RPS program, if the contract price is at or below a CPUC-calculated price benchmark (based on the cost of a fossil fuel plant), the price is considered reasonable. However, if it exceeds the benchmark, the utility has a limited amount of funds that it can use towards those above-market contract costs. The CPUC can penalize retail sellers that do not meet their annual RPS obligations.
- The CPUC has also led other activities to improve the RPS program, to coordinate with agencies statewide to facilitate renewable energy development in California, and to provide robust information to the public and Legislature on the progress of the RPS program and the trends in the renewable energy market. Specifically, the CPUC developed the concept of the Renewable Energy Transmission Initiative (RETI), and involved the CEC, CAISO, developers, environmental groups in order to facilitate statewide renewable transmission planning for new renewable energy projects. We maintain numerous databases of project characteristics and viability and produce robust analyses on the barriers facing renewable energy development. We have also begun an analysis of the feasibility and cost of a 33% RPS, which will result in a better understanding of the barriers and solutions for reaching a higher RPS target in California.

LEGISLATIVE HISTORY:

Two other measures have been introduced this session to increase the RPS to 33%. AB 64 (Krekorian, Bass) was approved by the Assembly Utilities and Commerce Committee on April 1st by a vote of 8 to 5. It is pending hearing in the Assembly Natural Resources Committee. SB 14 (Simitian et al) passed the Senate on March 31st by a vote of 21- 16 and is pending referral to policy committee in the Assembly.

STATUS:

SB 805 was referred to the Senate Appropriations Committee upon passage from the Senate Energy, Utilities and Communications Committee on April 21, 2009.

SUPPORT/OPPOSITION:

Support: Direct Energy
Northern California Power Agency
Pacific Gas and Electric Company (if amended)
Sempra Energy

Large Scale Solar Association (concerns)

Opposition: None on file.

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Date: April 30, 2009.

BILL LANGUAGE:

BILL NUMBER: SB 805 AMENDED
BILL TEXT

AMENDED IN SENATE APRIL 14, 2009

INTRODUCED BY Senator Wright
 (Coauthors: Senators
 Calderon and Strickland)

FEBRUARY 27, 2009

An act to ~~amend Sections 380, 399.12, 399.14, 454.6, 2842, and 8341 of, and to amend and renumber Sections 454.5, 454.55, 454.56, and 635~~ add Section 25741.5 to the Public Resources Code, and to amend Sections 399.11, 399.13, 399.14, 399.15, 399.16, and 399.17 of, to add Sections 399.10, 399.15.5, and 399.19 to, to add the heading of Article 16 (commencing with Section 399.10) to Chapter 2.3 of Part 1 of Division 1 of, to repeal the heading of Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of, and to repeal and add Section 387 of, the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 805, as amended, Wright. Energy: *renewable energy resources: procurement.*

~~—(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and gas corporations, as defined. The existing Public Utilities Act requires the commission to review and adopt a procurement plan for each electrical corporation in accordance with specified elements, incentive mechanisms, and objectives. The elements, among other things, require that the plan include a showing that the electrical corporation will, in order to fulfill its unmet resource needs, until a 20% renewable resources portfolio is achieved, procure renewable energy resources with the goal of ensuring that at least an additional 1% per year of the electricity sold by the electrical corporation is generated from eligible renewable energy resources, provided sufficient funds are made available to cover certain above market costs.~~

~~—This bill would expand the definition of an in state renewable electricity generation facility to include small hydroelectric generation of 50 megawatts or less if it is located outside the United States and meets certain other requirements, including that it has obtained the approvals required to demonstrate compliance with the environmental and other land use regulations of the governing jurisdiction.~~

~~—This bill would move the requirements for the commission to review and adopt a procurement plan for each electrical corporation from an article concerning rates to an article concerning long term plans and procurement plans, and make conforming changes that reference existing law. The bill would require that an electrical corporation's~~

~~proposed procurement plan include a showing that 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 pursuant to the renewables portfolio standard established pursuant to the California Renewables Portfolio Standard Program.~~

~~Existing law requires the commission, in consultation with the State Energy Resources Conservation and Development Commission (Energy Commission), to identify all potentially achievable cost effective electricity efficiency savings and to establish efficiency targets for electrical corporations to achieve pursuant to their procurement plan. Existing law requires the commission, in consultation with the Energy Commission to identify all potentially achievable cost effective natural gas efficiency savings and to establish efficiency targets for a gas corporation to achieve and requires a gas corporation to first meet its unmet resource needs through all available natural gas efficiency and demand reduction resources that are cost effective, reliable, and feasible.~~

~~This bill would move these requirements from an article concerning rates to an article concerning long term plans and procurement plans.~~

~~(2)~~

(1) The California Renewables Portfolio Standard Program (*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, *in order to fulfill unmet long-term resource needs*, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard). The renewables portfolio standard requires each 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. The *RPS program* requires the ~~commission~~ *Public Utilities Commission (PUC)* to review and adopt a renewable energy procurement plan for each electrical corporation. The *RPS program* requires the ~~commission~~ *PUC*, by rulemaking, to adopt a process that provides criteria for the rank ordering and selection of least-cost and best-fit eligible renewable energy resources to comply with the renewables portfolio standard on a total cost basis.

~~This bill would additionally require that the process consider the cost impacts of procuring the eligible renewable energy resources on the electrical corporation's procurement plan, the effects upon electrical system reliability, and the environmental and economic benefits of procuring renewable energy.~~

This bill would revise the renewables portfolio standard to require each retail seller, in order to fulfill the unmet long-term resource needs of the retail seller, to increase its total procurement of eligible renewable energy resources so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010, and 33% by December 31, 2020. The

bill would require that the procurement plan adopted for an electrical corporation include a renewables portfolio standard requiring the electrical corporation to procure a minimum quantity of electricity generated by eligible renewable energy resources so that 33% of its retail sales are procured from eligible renewable energy resources by December 31, 2020, and would delete the requirement that the plan require the electrical corporation to increase its total procurement of eligible renewable energy resources by at least an additional 1% of retail sales per year until it reaches the renewables portfolio standard.

Under existing law, 51.5% of the renewable energy public goods charge is retained by the state's 3 largest electrical corporations for use in paying the above-market costs of electricity from eligible renewable energy resources procured pursuant to the RPS program. Existing law authorizes the collection of the renewable energy public goods charge until January 1, 2012. Existing law requires the PUC, as part of the renewables portfolio standard procurement solicitation process, to establish a methodology to determine the market price of electricity for terms corresponding to the length of contracts with eligible renewable energy resources, in consideration of certain matters. Existing law requires the PUC to establish a limitation on the total costs expended by electrical corporations above the market price determined by the PUC pursuant to this methodology. The cost limitation is required to be equal to the amount of renewable energy public goods charge moneys retained by the state's 3 largest electrical corporations.

This bill would require that, beginning January 1, 2012, the cost limitation established by the PUC for electrical corporations be 3% of the annual revenue requirement for the previous calendar year, including all direct and indirect costs associated with achieving a 33% renewables portfolio standard.

The RPS program requires the ~~commission~~ PUC, by rulemaking to adopt flexible rules for compliance that apply to all years, including years before and after the retail supplier procures at least 20% of total retail sales of electricity from eligible renewable energy resources.

This bill would require the commission, by rulemaking, to adopt flexible rules for compliance that apply to all years before and after a retail seller procures at least 20% by December 31, 2010, and 33% by December 31, 2020, of total retail sales of electricity from eligible renewable energy resources. The bill would require that if, despite good faith efforts to procure eligible renewable energy resources, the procurement options available to retail sellers are insufficient to meet targets due to insufficient supply or uncompetitive prices, a retail seller will not be deemed out of compliance by the PUC. The bill would require that the RPS program allow electricity from eligible renewable energy resources and unbundled renewable energy credits, as defined, from eligible renewable energy resources located in states within the WECC, as defined, to count towards the renewables portfolio standard targets, provided that eligible renewable energy resources providing benefits within the state, in accordance with certain purposes, be preferred. The bill would authorize a retail seller to meet ~~up to~~ no more than 25% of its renewables portfolio standard procurement requirements with unbundled renewable energy credits ~~—, as defined,—~~ from eligible renewable energy resources located outside the state, b

~~ut within the region of the WECC, as defined. The bill would require a retail seller to annually report certain information to the commission relative to compliance with the renewables portfolio standard.~~

~~Existing law requires the commission to review the results of an eligible renewable energy resources solicitation submitted for approval by an electrical corporation and to accept or reject proposed contracts based on consistency with the approved plan.~~

~~This bill would require the commission to additionally establish project development milestones to evaluate the potential for compliance with the adopted plan and a set of actions that will occur as a result of not meeting those milestones. The bill would require the commission, in consultation with the Energy Commission, to adopt rules for the enforcement of the program with respect to retail sellers. The bill would provide that if the commission determines that despite good faith best efforts by a retail seller to procure eligible renewable energy resources, that there are insufficient eligible renewable energy resources at competitive prices to enable the retail seller to meet its renewables portfolio standard procurement requirements, the retail seller is not out of compliance with the renewables portfolio standard.~~

The existing RPS program includes provisions that are applicable to an electrical corporation with 60,000 or fewer customer accounts in California that serves retail end-use customers outside California, and authorizes the commission to adopt procurement requirements for the electrical corporation as a specified percentage of total kilowatthours sold by the electrical corporation to its retail end-use customers in California in a calendar year.

This bill would extend these provisions to an electrical cooperative, as defined, that serves 25,000 or fewer customer accounts in California that serves retail end-use customers outside of California.

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

Because certain of the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

~~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.~~

(2) *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. Existing law requires the governing board of a local publicly owned electric utility to report certain information relative to renewable energy resources to its customers.*

This bill would require the governing board of a local publicly owned electric utility, in order to meet long-term unmet resource needs, to adopt and implement a renewables portfolio standard that requires the utility to increase its procurement of eligible renewable energy resources so that 33% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2020. The bill would require the governing board to formally adopt a renewables portfolio standard program meeting these procurement requirements at a duly noticed public hearing on or before January 31, 2011. The bill would require that the renewables portfolio standard program of a local publicly owned electric utility utilize the accounting system adopted by the State Energy Resources Conservation and Development Commission (Energy Commission) for retail sellers. The bill would authorize the renewables portfolio standard program of a local publicly owned electric utility to use renewable energy credits to the same extent authorized by the commission for retail sellers. The bill would require a local publicly owned electric utility to annually report to its customers and the Energy Commission the utility's progress toward meeting the 33% renewables portfolio standard procurement requirement, including information about the location and sources of electricity and use of renewable energy credits. By placing additional requirements upon local publicly owned electric utilities, which are entities of local government, the bill would impose a state-mandated local program.

(3) The existing RPS program requires the Energy Commission to (1) certify eligible renewable energy resources, (2) design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, (3) establish a system for tracking and verifying renewable energy credits (RECs) that verifies the generation and delivery of electricity associated with RECs, and (4) certify, for purposes of compliance with the renewables portfolio standard by a retail seller, the eligibility of RECs associated with deliveries of electricity to a local publicly owned electric utility. Existing law requires that for an REC to be certified that is associated with deliveries of electricity to a local publicly owned electric utility, the local publicly owned electric utility must be in compliance with an RPS program adopted for the utility by its governing board, and that the RPS program adopted by the utility establishes an annual renewables portfolio standard target comparable to those applicable to an electrical corporation, is procuring sufficient eligible renewable energy resources to satisfy the targets, and will not fail to satisfy the targets in the event that the REC is sold to another retail seller.

This bill would require that for an REC to be certified that is associated with deliveries of electricity to a local publicly owned electric utility, the local publicly owned electric utility must be in compliance with an RPS program adopted for the utility by its governing board, and that the RPS program adopted by the utility establishes a renewables portfolio standard target equivalent to those applicable to an electrical corporation, is procuring sufficient eligible renewable energy resources to meet the targets, and will not fail to meet the targets in the event that the REC is sold to a retail seller.

(4) 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: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 25741.5 is added to the Public Resources Code , to read:

25741.5. For a local publicly owned 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 Western Electricity Coordinating Council (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:

(a) The electricity generated by the facility is procured by the local publicly owned utility and is not used to fulfill renewable energy procurement requirements in other states.

(b) The local publicly owned utility participates in, and complies with, the accounting system administered by the commission pursuant to subdivision (b) of Section 399.13 of the Public Utilities Code.

(c) The commission verifies that the electricity generated by the facility is eligible to meet procurement targets.

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

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

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

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

~~(2) The resource mix used to serve its customers by fuel type. Reports shall contain the contribution of each type of renewable energy resource with separate categories for those fuels that are eligible renewable energy resources as defined in Section 399.12, except that the electricity is delivered to the local publicly owned electric utility and not a retail seller. Electricity shall be reported as having been delivered to the local publicly owned electric utility from an eligible renewable energy resource when the electricity would qualify for compliance with the renewables portfolio standard if it were delivered to a retail seller.~~

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

SEC. 3. Section 387 is added to the

Public Utilities Code , to read:

387. (a) In order to meet long-term unmet resource needs, the governing body of each local publicly owned electric utility shall adopt and implement a renewables portfolio standard that requires the utility to increase its procurement of eligible renewable energy resources so that 33 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, 2020. For purposes of this section, "eligible renewable energy resource," "procure," "renewables portfolio standard," and "renewable energy credit" have the same meanings as defined in Article 16 (commencing with Section 399.10).

(b) The governing body of each publicly owned electric utility shall, on or before January 31, 2011, and at a duly noticed public hearing, formally adopt a renewables portfolio standard program meeting the procurement requirements of subdivision (a). Prior to adoption of the program, the governing body of the local publicly owned electric utility shall provide opportunities for public participation.

(c) (1) The renewables portfolio standard program adopted by a governing body of a local publicly owned utility may authorize the use of renewable energy credits to the same extent authorized by the commission pursuant to Section 399.16 for retail sellers.

(2) The renewables portfolio standard program adopted by a governing body of a local publicly owned utility shall utilize the accounting system adopted by the Energy Commission pursuant to Section 399.13 for retail sellers.

(d) The governing board of each publicly owned electric utility shall annually report to its customers and the Energy Commission on the utility's progress toward meeting the 33 percent renewables portfolio standard procurement requirement of subdivision (a), including all of the following:

(1) The amount of electricity procured from eligible renewable energy resources located in this state, by source.

(2) The amount of electricity procured from eligible renewable energy resources located outside the state, generated within the WECC, by source.

(3) The amount of renewable energy credits procured from eligible renewable energy resources located in this state.

(4) The amount of renewable energy credits procured from eligible renewable energy resources located outside this state, for electricity generated within the WECC.

(e) Upon distribution of information related to its renewable energy resource procurement status and future plans to its governing body, 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.

SEC. 4. The heading of Article 16 (commencing with Section 399.10) is added to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code , to read:

Article 16. California Renewables Portfolio Standard Program

SEC. 5. Section 399.10 is added to the Public Utilities Code , to read:

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

(a) Reliable, reasonably priced, and environmentally responsible electrical service is essential to the economic well-being of California consumers and businesses.

(b) The State Air Resources Board has identified a statewide target of generating 33 percent of the state's electricity from renewable energy resources as a key measure to comply with the requirements of the California Global Warming Solutions Act of 2006 to achieve cost-effective reductions in emissions of greenhouse gases consistent with maintaining reliability of the electrical system.

(c) The State Air Resources Board has identified the need for sufficient transmission and the ability to integrate large quantities of intermittent renewable energy resources, such as wind and solar generation, as a key prerequisite to reaching the target of generating 33 percent of the state's electricity from renewable energy resources, so that the state's electrical system continues to operate in an efficient and reliable manner.

SEC. 6. The heading of Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code is repealed.

~~Article 16. California Renewables Portfolio Standard Program~~

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

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

(a) In order to attain a target of generating 20 percent of total retail sales of electricity in California from eligible renewable energy resources by December 31, 2010, and 33 percent by December 31, 2020, and for the purposes of increasing the diversity, reliability, public health and environmental benefits of the energy mix, reducing emissions of greenhouse gases, and promoting economic development, it is the intent of the Legislature that the commission and the ~~State Energy Resources Conservation and Development~~ Energy Commission implement the California Renewables Portfolio Standard Program described in this article.

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

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

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

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

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

SEC. 8. Section 399.13 of the Public Utilities Code is amended to read:

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

(a) Certify eligible renewable energy resources that it determines meet the criteria described in subdivision (b) of Section 399.12 or Section 399.12.5 .

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

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

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

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

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

SEC. 9. Section 399.14 of the Public Utilities Code is amended to read:

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

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

(A) A process for determining market prices pursuant to subdivision (c) of Section 399.15. The commission shall make specific determinations of market prices after the closing date of a competitive solicitation conducted by an electrical corporation for eligible renewable energy resources.

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

(C) (i) Flexible rules for compliance, including rules permitting retail sellers to apply excess procurement in one year to subsequent years or inadequate procurement in one year to no more than the following three years. The flexible rules for compliance shall apply to all years, including years before and after a retail seller procures at least 20 percent , by December 31, 2010, and 33 percent, by December 31, 2020, of total retail sales of electricity from eligible renewable energy resources. *If, despite good faith efforts to procure eligible renewable energy resources, the procurement options in Section 399.15.5 are insufficient to meet targets due to insufficient supply or uncompetitive offers, a retail seller shall not be deemed out of compliance.*

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

(I) Utilize flexible delivery points.

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

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

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

(D) Standard terms and conditions to be used by all electrical corporations in contracting for eligible renewable energy resources, including performance requirements for renewable generators. A contract for the purchase of electricity generated by an eligible renewable energy resource shall, at a minimum, include the renewable energy credits associated with all electricity generation specified under the contract. The standard terms and conditions shall include

the requirement that, no later than six months after the commission's approval of an electricity purchase agreement entered into pursuant to this article, the following information about the agreement shall be disclosed by the commission: party names, resource type, project location, and project capacity.

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

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

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

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

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

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

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

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

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

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

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

procurement entity or require any party to purchase eligible renewable energy resources from a procurement entity.

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

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

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

SEC. 10. Section 399.15 of the Public Utilities Code is amended to read:

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

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

(1) Each retail seller shall, pursuant to subdivision (a), increase its total procurement of eligible renewable energy resources ~~by at least an additional 1 percent of retail sales per year~~ so that ~~20~~ 33 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, ~~2010~~ 2020. A retail seller with ~~20~~ 33 percent of retail sales procured from eligible renewable energy resources in any year shall not be required to increase its procurement of renewable energy resources in the following year.

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

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

~~(4) In the event that a retail seller fails to procure sufficient eligible renewable energy resources in a given year to meet any annual target established pursuant to this subdivision, the retail seller shall procure additional eligible renewable energy resources~~

~~in subsequent years to compensate for the shortfall, subject to the limitation on costs for electrical corporations established pursuant to subdivision (d).~~

(c) The commission shall establish a methodology to determine the market price of electricity for terms corresponding to the length of contracts with eligible renewable energy resources, in consideration of the following:

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

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

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

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

(1) The cost limitation shall be equal to the amount of funds transferred to each electrical corporation by the Energy Commission pursuant to subdivision (b) of Section 25743 of the Public Resources Code and the 51.5 percent of the funds which would have been collected through ~~January 1, 2012~~ *December 31, 2011*, from the customers of the electrical corporation based on the renewable energy public goods charge in effect as of January 1, 2007. *Commencing January 1, 2012, the cost limitation shall be 3 percent of the annual revenue for the previous calendar year, including all direct and indirect costs associated with achieving a 33 percent renewables portfolio standard.*

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

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

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

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

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

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

(3) If the cost limitation for an electrical corporation is insufficient to support the total costs expended above the market prices determined in subdivision (c) for the procurement of eligible renewable energy resources satisfying the conditions of paragraph (2), the commission shall allow

the electrical corporation to limit its procurement to the quantity of eligible renewable energy resources that can be procured at or below the market prices established in subdivision (c).

(4) Nothing in this section prevents an electrical corporation from voluntarily proposing to procure eligible renewable energy

resources at above-market prices that are ~~not~~ counted toward the total cost limitation. Any voluntary procurement involving above-market costs shall be subject to commission approval prior to the expense being recovered in rates.

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

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

SEC. 11. Section 399.15.5 is added to the Public Utilities Code , to read:

399.15.5. (a) The renewables portfolio standard program authorized pursuant to this article shall allow electricity from eligible renewable energy resources and unbundled renewable energy credits from eligible renewable energy resources located in states within the WECC to count towards the renewables portfolio standards targets. However, eligible renewable energy resources providing benefits within this state in accordance with the purposes set forth in subdivisions (a), (b), and (c) of Section 399.11 shall be preferred. The preferred means of procuring eligible renewable resources shall be to do any of the following:

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

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

(3) Procure unbundled renewable energy credits, provided, however, that no more than 25 percent of a renewables portfolio standard requirement shall be met with unbundled renewable energy credits from eligible renewable resources located outside this state and within the WECC.

(b) The commission may require an electrical corporation to own and operate eligible renewable energy resources in furtherance of the renewables portfolio standard program.

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

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

(1) Prior to authorizing any renewable energy credit to be used toward satisfying ~~annual~~ procurement targets, the commission and the Energy Commission shall conclude that the tracking system established pursuant to subdivision (c) of Section 399.13, is operational, is capable of independently verifying the electricity generated by an eligible renewable energy resource and delivered to the retail seller, and can ensure that renewable energy credits shall not be double counted by any seller of electricity within the service territory of the Western Electricity Coordinating Council (WECC).

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

(3) The electricity is delivered to a retail seller, the Independent System Operator, or a local publicly owned electric

utility.

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

(5) No renewable energy credits shall be created for electricity generated pursuant to any electricity purchase contract with a retail seller or a local publicly owned electric utility executed before January 1, 2005, unless the contract contains explicit terms and conditions specifying the ownership or disposition of those credits. Deliveries under those contracts shall be tracked through the accounting system described in subdivision (b) of Section 399.13 and included in the baseline quantity of eligible renewable energy resources of the purchasing retail seller pursuant to Section 399.15.

(6) No renewable energy credits shall be created for electricity generated under any electricity purchase contract executed after January 1, 2005, pursuant to the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Sec. 2601 et seq.). Deliveries under the electricity purchase contracts shall be tracked through the accounting system described in subdivision (b) of Section 399.12 and count toward the renewables portfolio standard obligations of the purchasing retail seller.

(7) The commission may limit the quantity of renewable energy credits that may be procured unbundled from electricity generation by any retail seller, to meet the requirements of this article. *However, a retail seller shall be permitted to meet up to 25 percent of its renewables portfolio standard procurement requirements with unbundled renewable energy credits from eligible renewable energy resources located outside the state, but within the WECC.*

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

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

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

SEC. 13. Section 399.17 of the Public Utilities Code is amended to read:

399.17. (a) Subject to the provisions of this section, the requirements of this article apply to an electrical corporation with 60,000 or fewer customer accounts in California that serves retail end-use customers outside California *or an electrical cooperative, as defined in Section 2776, serving 25,000 or fewer customer accounts in California that serves retail end-use customers outside of California* .

(b) For an electrical corporation with 60,000 or fewer customer accounts in California that serves retail end-use customers outside California *or an electrical cooperative serving 25,000 or fewer customer accounts in California that serves retail end-use customers outside of California* , an eligible renewable energy resource includes a facility that is located outside California, if the facility is connected to the ~~Western Electricity Coordinating Council (WECC)~~ WECC transmission

system, provided all of the following conditions are met:

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

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

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

(c) The commission shall determine the ~~annual~~ procurement targets for an electrical corporation with 60,000 or fewer customer accounts in California that serves retail end-use customers outside California *or an electrical cooperative serving 25,000 or fewer customer accounts in California that serves retail end-use customers outside of California*, as a specified percentage of total kilowatthours sold by the electrical corporation *or cooperative* 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 *or an electrical cooperative serving 25,000 or fewer customer accounts in California that serves retail end-use customers outside of California*, may use an integrated resource plan prepared in compliance with the requirements of another state utility regulatory commission, to fulfill the requirement to prepare a renewable energy procurement plan pursuant to this article, provided the plan meets the requirements of Sections 399.11, 399.12, 399.13, and 399.14, as modified by this section.

(e) Procurement and administrative costs associated with long-term contracts entered into by an electrical corporation with 60,000 or fewer customer accounts in California that serves retail end-use customers outside California *or an electrical cooperative serving 25,000 or fewer customer accounts in California that serves retail end-use customers outside of California*, for eligible renewable energy resources pursuant to this article, at or below the market price determined by the commission pursuant to subdivision (c) of Section 399.15, shall be deemed reasonable per se, and shall be recoverable in rates of the electrical corporation's *or electrical cooperative's* California customers, provided the costs are not recoverable in rates in other states served by the electrical corporation *or cooperative*.

SEC. 14. Section 399.19 is added to the Public Utilities Code, to read:

399.19. (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 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, 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 reductions in greenhouse gas emissions 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; 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, consistent with the report prepared pursuant to subdivision (a), shall revise the procurement targets established for electrical corporations pursuant to Section 399.15, to reflect the cost and implementation determinations identified in the long-term procurement plan proceeding, as needed, to ensure that California consumers and businesses continue to receive reliable, reasonably priced electrical service.

SEC. 15. 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. All matter omitted in this version of the bill appears in the bill as introduced in the Senate, February 27, 2009 (JR11)