

**M e m o r a n d u m**

**Date:** February 11, 2009

**To:** The Commission  
(Meeting of February 20, 2009)

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

**Subject:** **AB 64 (Krekorian, Bass & Blakeslee) – Energy: renewable  
energy resources: generation and transmission  
As introduced: December 9, 2008**

**LEGISLATIVE SUBCOMMITTEE RECO: OPPOSE UNLESS AMENDED**

**SUMMARY OF BILL:**

This bill would modify the Renewable Portfolio Standard (RPS) program to, among other things, increase the minimum amount of renewable energy that must be procured by retail sellers and publicly owned utilities to 25% of their retail deliveries by 2015 and 35% by 2020, with a goal of 50% by 2035. This bill would also modify the feed in tariff (FIT) program for small scale renewable facilities by, among other things, increasing the size of eligible facilities from 1.5 MW to 5 MW. Finally, this bill would create the Renewable Infrastructure Authority (RIA) to plan, site, and permit, as well as potentially finance, own and operate, renewable generation and transmission facilities.

**SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:**

The CPUC supports the advancement of the renewable portfolio standard beyond 20% by 2010 towards a goal of 33% by 2020.<sup>1</sup> 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. However, the CPUC is concerned that this bill is overly prescriptive and will impede the Commission's ability to react to market conditions in order to support utility compliance

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<sup>1</sup> In the Energy Action Plan II (2005), the CPUC and CEC called for the examination of a 33% RPS. The CEC, through the 2008 Integrated Energy Policy Report (IEPR) Update, makes various recommendations pertaining to a 33% RPS. The CEC and CPUC supported a greater reliance on renewable energy so that at least 33% of the State's electricity needs are met by renewable resources by 2020 in their October 2008 decision recommending greenhouse gas regulatory strategies for the electric sector.

while preserving ratepayer cost protections. The Commission would prefer RPS legislation that is simple and flexible. The CPUC will continue to work with the Legislature and the Governor to design a workable statutory framework for advancing RPS.

## **DIVISION ANALYSIS (Energy Division):**

### **A. Renewable Portfolio Standard (RPS) program (Articles 1 – 5)**

This bill would require the implementation of higher RPS targets in 2015 and 2020, with a higher goal in 2035, and would modify several aspects of program implementation.

#### Increased RPS Targets

This bill would require investor-owned utilities (IOUs), energy service providers (ESPs), and publicly-owned utilities (POUs) to increase their procurement of renewable energy to 25% of retail sales by 2015 and 35% by 2020, with a goal of 50% by 2035.

Although the CPUC supports increasing the RPS beyond 20%, it remains concerned about mandating hard targets without conducting analysis on the feasibility of attaining the targets, given potential supply, transmission availability, and permitting timelines in California. The CPUC recommends either: 1) requiring retail providers to annually increase their renewable procurement by a set percentage of delivered energy per year (i.e. 1.5%) without mandating 35% by 2020; OR 2) mandating 25% by 2015 and 33% by 2020 without requiring annual incremental increases. The CPUC strongly encourages the Legislature and Governor to consider building into any statutory framework an opportunity for a mid-course correction. For example, this bill could be amended to require the CPUC to report to the Legislature and Governor before the end of 2015 on the costs and benefits of the RPS program during the five year period of 2010 through 2014. Based on this information, the Legislature and Governor could reassess the viability of proceeding to 33% by 2020 based on actual data from the program.

#### Eligibility

Proposed PU Code section 953 states that to be eligible for the RPS program, a facility either has to be located in state or, if located out of state, has to deliver its energy to California. However, in Article 5, this bill would also allow renewable energy credits (RECs) without a delivery requirement to count for the RPS program.

***Suggested amendment:*** Modify proposed PU Code section 953 to allow: 1) bundled delivered energy; and 2) REC-only transactions from out of state facilities with no delivery requirement. Further, keep existing language that gives the CPUC the authority to determine the appropriate cap on such REC-only transactions.

Existing PU Code section 953(b)(4) requires facilities that do not have their first point of interconnection in California, and that are located outside of the United States, to be “developed and operated in a manner that is as protective of the environment as a similar facility located in the state.” This provision should also apply to facilities located outside the United States but have their first point of interconnection in California.

***Suggested amendment:*** Add the language from proposed PU Code section 953(b)(4) to 953(a) in order to be consistent. Without this change, facilities that are located in Mexico, but have their first point of interconnection in California, would not be required to operate in the environmentally-preferable manner prescribed in section 953(b)(4).

### Procurement Plan and Contract Evaluation Methodologies

Proposed PU Code section 962 is overly detailed and complex. Rather than prescribe the requirements for renewable energy procurement plans, bid solicitations, contract duration, and the like, the statute should establish the basic framework for procurement planning and evaluation and allow the CPUC to promulgate the details according to experience and market conditions.

For example, proposed PU Code section 962(b) requires a utility’s RPS Procurement Plan to include a methodology for ranking renewable energy projects bid into its solicitation. The language says that the methodology should be proposed “so that each electrical corporation’s total renewables portfolio benefits ratepayers.” This provision is unclear. Under current law (PU Code section 701.1), the Commission is already required to consider ratepayer impacts when evaluating proposed utility Procurement Plans.

***Suggested amendment:*** If the Legislature believes it is necessary to include a statement regarding ratepayer benefits in section 962(b), the CPUC recommends eliminating “so that each electrical corporation’s total renewables portfolio benefits ratepayers” and replacing it with a period followed by: *“This process shall consider, but shall not be limited to, the cost impact of procuring the eligible renewable energy resources on the electrical corporation’s electricity portfolio, system reliability, and the environmental and economic benefits and costs of procuring renewable energy.”*

### “California supplier”

The CPUC generally supports a Western regional approach to increasing renewable generation, and, as such, is cautious about proposed preferential treatment of in-state renewable energy resources over out-of-state resources. A national RPS program is supported by the new U.S. President, and will likely be adopted by Congress. California, as a renewable-rich state, has the potential to be a renewable energy exporter in the future. The state should be cautious

about setting a precedent among its sister states for in-state preferential treatment.

Specifically, the language in proposed PU Code section 962(g) relating to “California supplier” seems to have been gleaned from another PU Code that was specifically written for the Self Generation Incentive Program to provide preference to a California fuel cell manufacturer. This language does not translate well to other renewable resource types. Also, it would be complex, impractical, and inefficient for the CPUC to implement this preference when it is reviewing contracts. If the Legislature decides to move forward with this preference, then it should instead require the utility to incorporate a preference for a “project located in California” (perhaps as an “add-on”) as part of its bid evaluation process in proposed PU Code §962(b).

### Cost Containment Mechanism

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, and to improve the environment and to encourage renewable energy resources.

However, the CPUC generally supports replacing the Market-Price Referent (MPR) approach to cost containment, which essentially caps the amount by which a renewable energy contract's costs can exceed those of gas-fired alternatives. Stakeholders have rightly questioned why there should be a cap on what the state pays for renewable energy when there is not a cap on the cost of fossil-fired power. In the present context of climate policy, the more appropriate comparison may be between renewable energy costs and those of other GHG reduction measures.

Proposed PU Code section 963 would adopt a “benchmark price” to evaluate the price of renewable energy contracts by comparing them to non-renewable alternatives. Unfortunately, a benchmark price would suffer from the same problems as the MPR that it is intended to replace. Also like the MPR, the CPUC's development of a benchmark price would require a complex calculation and invite significant litigation.

Instead, the CPUC should develop a methodology to evaluate individual contract prices, as this is the CPUC's most fundamental responsibility. Pursuant to PU Code section 454.5, the CPUC has existing authority to approve IOU Procurement Plans and contracts that comply with the Plan. Renewable procurement should be treated no differently than other forms of procurement, which are evaluated based on comparable market prices and the reasonableness of project costs relative to other projects bid into the same solicitation.

Commission staff has presented a proposal in the context of the Long Term Procurement Planning proceeding to use a long term portfolio analysis to evaluate all utility procurement decisions from the perspective of cost, system reliability, and greenhouse gas impact. This approach would be consistent with the CPUC's existing statutory authority and could potentially support comparisons with other GHG reduction measures within the electric sector.

***Suggested amendments:***

Delete the last sentence of proposed PU Code §963(b), which requires the cost limitation to be calculated as a percentage of a utility's revenue requirement. This method of total cost limitation is overly prescriptive and could result in complicated rules that are difficult to administer.

Delete proposed PU Code §963(c): it would not be a rational policy to allow all retail sellers to limit their procurement because one utility exceeded its cost limitation.

Delete proposed PU Code §963(d): This clause was necessary in previous legislation because certain contracts (e.g. bilaterals) did not count toward the cost limitation. However, the CPUC may wish to require all contracts to count towards a utility's cost limitation.

**Renewable Energy Credits (RECs)**

The CPUC generally supports tradeable RECs, and the use of out-of-state RECs with no delivery requirement.

The CPUC supports allowing RECs as a procurement tool because, given the long lead time for building projects in California, allowing RECs would increase the liquidity of the renewables market, which, in turn, could lead to a more competitive market and lower RPS compliance costs. It would also facilitate compliance for some retail sellers, at a potentially lower cost, because signing long-term energy contracts doesn't fit the business model of smaller retail sellers.

A delivery requirement is not necessary because it creates complexity without creating a hedging benefit for ratepayers. Bundled contracts should have a requirement of delivery of the energy to California because they provide a hedging benefit since the underlying energy is bought at a fixed price. However, out-of-state eligible REC contracts should not have a delivery requirement because REC contracts implicitly never provide a hedging benefit because, by definition, the utility buying the REC is not buying the energy. Because RECs provide other benefits to ratepayers, however, we support allowing their use to reach 33%.

Also, the proposed section's concept of a declining percentage over time of RECs with no delivery requirement moves away from the preferred outcome of this procurement

tool - a robust renewables and REC market that allows for cost-effective compliance to the benefit of ratepayers.

***Suggested amendments:*** If the Legislature wishes to have a broadly applicable RPS program that takes advantage of the GHG reduction potential of renewables in the Western Region as a whole, REC-only contracts associated with energy not delivered to California should be included in the definition of “procure” in proposed PU Code section 952(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.

## **B. Feed in Tariff (FiT) for Small-Scale Renewables (Article 6)**

The CPUC generally supports the use of FiTs for small-scale renewable distributed generation facilities. Under the Commission’s existing program (established by AB 1969 of 2006, and modified by SB 380 of 2008), the CPUC has established feed-in tariffs for energy generated by an eligible renewable electric generation facility of no more than 1.5 MW, at a price established at the “market price referent” and adjusted by the Commission for time of delivery.

This bill would modify the program to raise the applicable facility size from 1.5 MW to 5 MW, to require the facilities to be strategically located near load, and to allow the Commission to adjust the price for “any other attributes of renewable generation.” This bill would also require publicly-owned utilities with 75,000 or more customers to offer this tariff, which they are currently not required to do.

The CPUC has an open proceeding on FiTs (R.08-08-009) in which it is considering whether: facilities up to 20 MW should be allowed to take the tariff; performance standards in FiT contracts should be changed; or third party ownership should be allowed.

This bill seems to be aimed at providing the CPUC with additional flexibility in its implementation of the FiT program. But it may inadvertently limit the CPUC’s ability to maintain a viable program in the future. As such, the Commission recommends the following:

- Allow the Commission flexibility to set the total program cap in conjunction with the needs of the RPS program and according to the total capacity needs identified in the long-term procurement planning proceeding.
- Allow the Commission flexibility to designate a per project size, up to 20 MW per project, for the FiT program.
- Allow the Commission flexibility to determine the price paid for projects under the FiT based on the best available information in the RPS contracting pool. Delete

any references to market price referent (MPR) and “attributes of renewable generation” as the basis for determining price. Delete any references to “indifference.”

- Allow the Commission to set the price above avoided cost provided that the "above market funds" are kept within the same cost cap or cost containment mechanism that applies to the rest of the Renewable Portfolio Standard (RPS) program. Cost containment for the FiT program should be addressed as part of the Commission's regular procurement-related activities.
- Omit discussion of third-party ownership from statute since it is currently under consideration at the Commission. The Commission should be able to retain discretion over what types of ownership structures are required at the facilities that are eligible to participate in the FiT program.

***Suggested amendment:*** Repeal PU Code section 399.20 since this bill's proposed PU Code section 985 is duplicative.

### **C. Renewable Infrastructure Authority (Article 7)**

#### Developing an Annual Renewables Investment Plan

Under AB 64, RIA would be responsible for developing an Annual Renewables Investment Plan and take into account, among other things, reliability, resource adequacy, storage, demand reduction opportunities, environmental quality, and a “least cost electrical supply plan.” In fact, such broader planning criteria and objectives are, and will continue to be, explicitly and extensively addressed by the CPUC in fulfilling its responsibilities regarding ratemaking and reliability of service. This includes the CPUC's administration of resource adequacy and long term procurement programs, which are being increasingly coordinated with California ISO activities, in terms of planning assumptions, scenarios and results, especially to address transmission and system integration implications of renewable resource priorities.

Thus, besides duplicating existing efforts, any renewable energy plans or priorities produced by the RIA would need to be coordinated and mutually consistent with other resource planning activities that are legally required and go beyond the scope of the RIA. If AB 64 were to transfer the renewable resource planning function which is an essential component of over-all utility supply planning, to a new entity, the CPUC would not be able to fulfill its constitutionally mandated duty to fully regulate electric rates. These interdependencies are a major reason for CPUC's close involvement and interest in transmission planning and transmission access issues.

The CPUC's long term procurement planning process is in the midst of refinement to more explicitly and robustly address renewable energy priorities, options and risks, incorporating information from RETI, from RPS procurement and CAISO interconnection results to date, and from the CAISO's transmission planning process and assessment of renewables integration challenges. It is not clear how RIA would result in improved renewable resource planning.

## Funding Renewable Infrastructure Development

If RIA funds certain projects and thus takes a financial or other interest in certain renewable generation projects (or transmission) within a capital intensive renewable generation market that is hoped to be competitive and innovative, there can very well be a perception and even a reality of the RIA having an elevated interest in expediting those projects in which the RIA invests, as well as the associated transmission. Not surprisingly, we have already encountered complaints that California's efforts to prioritize renewable generation areas and associated transmission are going too fast in "picking winners and losers." Such complaints will become more forceful and more difficult to counter if the permitting entity itself has a financial interest in certain projects but not others.

## Transmission Planning and Permitting

Among other things, RIA would "...designate and prioritize renewable energy and associated transmission corridor zones, certify (site and permit) all renewable generators above 5 MW and all transmission".<sup>2</sup> The bill would give the new RIA "exclusive power to certify all electric transmission lines..." As discussed below, it is neither appropriate nor legally possible to separate the CPUC's transmission certification authority from its overall ratemaking authority, such as to transfer that authority to another entity.

The need for a new transmission line and its environmental impacts are tightly intertwined with the project's costs and its impact on retail electric rates paid by California utility customers. These factors are interrelated and must be balanced. Since transmission remains a regulated monopoly in California, transmission projects currently subject to CPUC jurisdiction are being proposed primarily by monopoly utility providers. When a regulated utility is authorized to build a transmission line, it is also guaranteed recovery of its costs plus a rate of return. In order to protect consumers from unreasonable rate increases, the review and approval of a new transmission line must include an analysis of not only its environmental impacts as required under CEQA, but also an analysis of its impacts on rates as required under the CPUC's ratemaking responsibilities.

As part of its constitutional authority to regulate public utility rates, the CPUC has the authority to certify (site and permit) electric transmission facilities proposed to be built by regulated public utilities. The California Attorney General has expressly found that the CPUC's authority to site transmission lines, as described in Public Utilities Code sections 1001, 1003, and 1005, is constitutional in nature. (Attorney General letter to Little Hoover Commission, June 23, 2005, pp. 6-9.)

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<sup>2</sup> Except for one limited category of transmission interconnecting individual generators to the grid, which would apparently continue to be permitted by the California Energy Commission.



Thus, neither the governor nor the legislature can legally remove constitutionally-granted functions from the CPUC.<sup>3</sup> Accordingly, exclusive power to certify transmission facilities cannot be transferred to the new RIA.

#### The complexity of environmental issues and coordination with federal agencies in transmission permitting

Because of the specific locations of California's high quality renewable resources, transmission lines to access those resources will *very often* require approvals from federal land management agencies and/or Native American tribes. The main reason that the transmission permitting process is so time consuming is the complexity of environmental issues, the existing legal requirements to address such impacts and the need to coordinate such environmental reviews with federal agencies that are not under the same time constraints as California agencies. RIA would not avoid or reduce this complexity.

#### Enhancing efficiency and coordination among various agencies

The CPUC has recently streamlined its permitting process, including increased attention to pre-filing activity such that when an application reaches the CPUC, it is more likely to be complete or nearly so.

The statewide collaborative Renewable Energy Transmission Initiative (RETI) involves the CPUC, CEC, CAISO, transmission owners, load serving entities, and renewable energy developers. It is providing important input to the transmission planning and permitting process both at the CPUC and CAISO programs. A new RIA, designating and prioritizing renewable resource zones and associated transmission corridors and projects, would duplicate both RETI's purpose and its outputs. It is unclear how the two would be reconciled and coordinated, or how ongoing resource and transmission planning processes which are being coordinated and preparing to use RETI information, would accommodate yet another source of renewable resource priorities and plans. Basically, it is unclear why it would be necessary or desirable to overlay an entirely new renewable energy prioritization process on top of RETI.

The CPUC supports and participates in the CAISO's transmission planning process and supports improved joint planning and operating ("seams") arrangements between the CAISO and non-CAISO transmission owners. CPUC staff also participate extensively in FERC proceedings regarding transmission access, planning, and cost recovery, since

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<sup>3</sup> The California Legislative Counsel has determined that "[B]ecause the California Constitution confers the function of public utility regulation on the commission, the Governor is precluded from transferring the statutory and constitutional authority of the commission that relates to the regulation of public utilities to any other entity of state government pursuant to the Governor's statutory authority to reorganize state government." (Legislative Counsel letter to Little Hoover Commission, June 20, 2005, p. 3.) Similarly, constitutionally-granted powers of the CPUC cannot be modified, curtailed, or abridged by legislation. (*People v. Western Air Lines, Inc.* (1954), 42 Cal. 2d 621, 637, citing *Western Assn. etc. R.R. v. Railroad Com.* (1916), 173 Cal. 802, 804.)

these matters tend to be both FERC jurisdictional and of considerable import to ratepayers and other California interests.

RIA's role, among other things, in identifying sites for transmission and performing "environmental, engineering and feasibility" studies, is duplicative of exiting efforts and would have to be reconciled with existing transmission planning processes and requirements, particularly the California ISO's FERC-regulated, FERC-approved open planning process and responsibilities<sup>4</sup>, which entail numerous provisions and requirements for participation, nondiscrimination, transparency and coordination with other planning entities. This is embedded within broader west-wide transmission planning centered on WECC and involves numerous procedures and requirements to maintain system reliability as well as communication and cooperation among transmission operators. WECC and individual transmission operators are all responsible to NERC and ultimately to FERC, for planning and operating standards and practices that impact reliability. (And, most do impact reliability.) The RIA's new planning role would have to address the transparency, nondiscrimination and collaboration requirements for transmission planning required by FERC's Order 890<sup>5</sup> and embodied in the CAISO's recently reformed planning process.

In summary, the RIA would become *another* layer in transmission planning, necessarily having to be reconciled and explicitly coordinated with existing layers. Furthermore, the transmission planning role envisioned for the RIA involves only renewable energy objectives, and would in any event have to be incorporated into the bigger transmission planning picture, including wider economic and reliability issues.

#### Proposed RIA will slow things down

The proposed RIA would slow things down by switching to a new method of deriving renewable resource and transmission priorities relative to priorities being established via RETI, via the CAISO's interconnection queue and planning process, and via the CPUC-administered long term procurement process including RPS solicitations. These processes are being increasingly coordinated and already represent more than enough renewable generation projects to meet the 33% goal. It is unlikely that five years from now the RIA could reach the state of effectiveness that the present interacting processes will reach with the progress already made.

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<sup>4</sup> If the RIA would actually own a new transmission facility, that facility might not be subject to the same extent of FERC jurisdiction as public utility-owned transmission. However, this would complicate "seams" issues reflecting the contrasting jurisdictional and operational models for the CAISO's independently operated grid versus neighboring transmission systems owned by municipal or federal entities. If, more consistent with AB 64's emphasis on centralization of decisions, any RIA-owned transmission were to become part of the CAISO-operated system, then it would be fully subject to FERC jurisdiction regarding planning, cost recovery and other matters

<sup>5</sup> Transmission projects must ultimately go to FERC for approval of rates and cost recovery, where the CPUC, within its retail ratemaking role, represents the interests of California consumers and other market participants.

Additionally, the different proposed RIA functions each require substantial public process that must attain nontrivial levels of efficiency, transparency and stakeholder confidence. As previously discussed, most proposed RIA functions are already being performed elsewhere, and, in fact, they already incorporate effective and established public process, whether it be via the CPUC's long term procurement and transmission permitting processes, the CAISO's transmission planning and other stakeholder processes, or via RETI. It would be challenging, laborious, contentious, arguably infeasible, and, what is most important, *unnecessary*, to recreate these multiple dimensions of public process at a reasonable level of efficiency within a single new multi-dimensional organization, in a short time.

### Transmission Cost recovery

In the process of permitting transmission projects, the CPUC establishes cost caps, and as a result of Decision 06-06-034 (implementing Public Utilities Code § 399.25), may approve eligibility for recovery in retail rates of transmission costs incurred in support of renewable energy goals in the event FERC disallows recovery. The CPUC also participates on behalf of California interests in proceedings through which FERC approves rates for recovery of transmission costs, including costs of major projects permitted by the CPUC.

### Establishing Charges to Recover Rates

AB 64 would authorize RIA to establish and collect charges for the projects funded by it including energy production. CPUC is the entity constitutionally responsible for setting energy rates for all customers of CPUC jurisdictional investor owned utilities. The transmission component of these rates is established by FERC and is included in CPUC approved rates. RIA would have no legal authority to establish or collect such charges.

## **PROGRAM BACKGROUND:**

### RPS Program

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 (1,000 megawatts of which have already begun delivering RPS-eligible energy).

Every 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 issue a request for offers to solicit for renewable energy project bids. After receiving the bids, the utilities rank each one, 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 has also become involved in 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. For example, we started the Renewable Energy Transmission Initiative (RETI), and involved the CEC, CAISO, developers, and 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.

#### Feed-in-Tariff for Small Scale Renewables

Public Utilities Code § 399.20 requires each electrical corporation to establish a tariff for the purchase of electricity from an eligible renewable water or wastewater facility at a market price determined by the Commission. The Commission implemented § 399.20 by D. 07-07-027 on June 26, 2007. The decision adopted tariffs and standard contracts for the purchase of this electricity up to 1.5 MW from water and wastewater customers, and additionally it made the same program available to all other renewable customer generators in PG&E and SCE territory. Later, the Commission expanded the program to all customers in SDG&E's territory. The Commission's implementation of § 399.20 is considered phase 1 of the Tariff and Standard Contract Implementation for RPS Generators. The Commission is currently considering phase 2, which includes consideration of expanding the contract to facilities up to 20 MW under R.08-08-009.

On September 28, 2008, SB 380 amended Public Utilities Code § 399.20 to allow purchase of electricity for any eligible renewable electric facility and increased the statewide cap from 250 MW to 500 MW, and it removed any requirement that the tariff be available to water or wastewater facilities. Comments have been filed with the Commission concerning implementing the changes mandated in SB 380, and the Commission is currently working on a Decision to implement SB 380.

The California Energy Commission (CEC) has been investigating feed-in tariffs. They held staff workshops on June 30, 2008 and October 1, 2008 in order to discuss policy directions for feed-in tariffs. Prior to the October 1, 2008 workshop a draft consultant report was issued entitled "California Feed-in Tariff Design and Policy Options". Based on that report and workshops, the CEC has recommended that the Commission immediately implement a feed-in tariff program for all RPS-eligible generating facilities up to 20 MW in size. They recommend that such a program should include must-take provisions as well as cost-based technology-specific prices that generally decline over time and are not linked to the MPR.

As a part of R.08-08-009, the Commission's Energy Division staff issued a data request on January 28, 2008 in preparation for a workshop to be held on February 10, 2008. The purpose of the workshop is to determine if the existing feed-in tariff contract should require additional terms and conditions if the Commission were to expand the existing feed-in tariff contract from 1.5 MW up to 20 MW. Examples of additional terms and conditions include performance standards. Participants of the workshop will review the existing feed-in tariff contract, proposed additional terms and conditions, and parameters of terms and conditions. The workshop will result in clarification of party positions and identification of areas of consensus.

#### Transmission siting and permitting

Existing constitutional authority exists for CPUC jurisdiction over transmission siting and approval. Also, per the California Environmental Quality Act (CEQA), the CPUC has discretionary authority (CPCN process) regarding electric infrastructure owned and / or operated by investor owned utilities, therefore CPUC is the lead agency in preparing the environmental impact report (CEQA).

Currently, for siting transmission lines to be constructed by investor owned utilities, the IOU prepares a plan of service and submits it to the CAISO for approval. After the CAISO approves the project based on economic and reliability analysis, the IOU prepares an application and Proponent's Environmental Assessment (PEA) and submits it to the CPUC. Once the application is filed with and deemed complete by the CPUC, an environmental document is prepared. During the process of preparing the environmental document, the CPUC staff holds extensive public meetings and agency consultations in order to site a transmission line. Preparation of the environmental document and the CPUC's CPCN process take place concurrently. Eventually, the environmental document is used in the CPCN process. When the applicant receives the CPCN approval, they may start construction.

Currently, the CEC permits thermal power facilities greater than 50 MW. A developer files an application with the CEC and CEC staff reviews the application and determines if the application is adequate. When the application is adequate, the CEC staff prepares a draft and final staff assessment. When the Commission approves the application, the developer can construct the power facility.

CPUC staff currently participate in the CAISO's transmission planning process including issues related to renewable and other resource priorities as well as the need for and efficiency of transmission projects.

CPUC staff plays a leading role in the RETI process to prioritize renewable energy zones and associated transmission, and generally works closely with CAISO and stakeholders to coordinate supply and transmission planning on an increasingly forward-looking basis.

**STATUS:** This bill is currently in Assembly Utilities & Commerce Committee awaiting hearing. The bill has been double referred to the Assembly Natural Resources Committee as well.

**SUPPORT/OPPOSITION:**

Unknown.

**STAFF CONTACTS:**

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**Date:** February 11, 2009.

## **BILL LANGUAGE:**

BILL NUMBER: AB 64            INTRODUCED  
                                 BILL TEXT

INTRODUCED BY    Assembly Members Krekorian, Bass, and Blakeslee

DECEMBER 9, 2008

An act to amend Section 25500 of, and to repeal Chapter 4.3 (commencing with Section 25330) of Division 15 of, the Public Resources Code, and to amend Section 454.5 of, to amend and repeal Section 387 of, to add Section 399.23 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.

### **LEGISLATIVE COUNSEL'S DIGEST**

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

(1) The Public Utilities Act imposes various duties and responsibilities on the Public Utilities Commission with respect to the purchase of electricity and requires the commission to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program. The 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 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 program, to be operative on January 1, 2011, to require that a retail seller and a local publicly owned electric utility: (1) procure at least 20%

of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, 2010, (2) procure at least 25% of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, 2015, (3) procure at least 35% of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, 2020, and (4) have a goal of procuring at least 50% of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, 2035. The commission 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 commission to establish annual 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 corporation's total renewables portfolio benefits ratepayers. The bill would require the commission 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. The bill would require the commission 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. The bill would revise existing law with respect to the use of renewable energy credits to meet the renewables portfolio standard procurement requirements to and would allow retail sellers and local publicly owned electric utilities to utilize a declining percentage of credits earned on electricity that is not delivered, as defined, to the state.

Existing law requires every electrical corporation to file with the commission a standard tariff for electricity generated by an electric generation facility, as defined, that is owned and operated by a retail customer of the electrical corporation. Existing law requires that the electric generation facility: (1) have an effective capacity of not more than 1.5 megawatts and be located on property owned or under the control of the customer, (2) be interconnected and operate in parallel with the electric transmission and distribution grid, (3) be strategically located and interconnected to the electric transmission system in a manner that optimizes the deliverability of electricity generated at the facility to load centers, and (4) meet the definition of an eligible renewable energy resource under the California Renewables Portfolio Standard Program. Existing law requires that the tariff provide for payment for every kilowatthour of electricity generated by an electric generation facility at a market price referent established by the commission pursuant to the program. Existing law requires the electrical corporation to make this tariff available to customers that own and operate an electric generation facility within the service territory of the electrical corporation, upon request, on a first-come-first-served basis, until



the combined statewide cumulative rated generating capacity of those electric generation facilities equals 500 megawatts, or the electrical corporation meets its proportionate share of the 500 megawatt limit based upon the ratio of its peak demand to total statewide peak demand of all electrical corporations. Existing law authorizes the commission to modify or adjust the above-described requirements for any electrical corporation with less than 100,000 service connections, as individual circumstances merit. Existing law provides that the electricity generated by an electric generation facility counts toward the electrical corporation's renewables portfolio standard and provides that the physical generating capacity counts toward meeting the electrical corporation's resource adequacy requirements.

This bill would instead require an electrical corporation to file with the commission a standard tariff for the electricity purchased from a small-scale renewable distributed generation facility, as defined, that is owned, leased, or rented by a retail customer of the electrical corporation. The bill would revise the first requirement, discussed above, to instead require that the small-scale renewable distributed generation facility have an effective capacity of not more than 5 megawatts, subject to the authority of the commission to reduce this megawatt limitation, discussed below. The bill would require that the tariff provide for a base payment rate for every kilowatthour of electricity purchased from a small-scale renewable distributed generation facility at the benchmark price established by the commission pursuant to the California Renewables Portfolio Standard Program, for a period of 10, 15, or 20 years, as authorized by the commission. The bill would authorize the commission to adjust the payment rate to reflect the value of the electricity on a time-of-delivery basis and any other attributes of renewable generation and require, with respect to rates and charges, that ratepayers that do not receive service pursuant to the tariff are indifferent, with respect to rates and charges, to whether other ratepayers receive service pursuant to the tariff. The bill would require the electrical corporation to make the tariff available to any customer that owns, leases, or rents a small-scale renewable distributed generation facility within the service territory of the electrical corporation, upon request, on a first-come-first-served basis, until the combined statewide cumulative rated generating capacity of those facilities subject to tariffs with electrical corporations reaches 500 megawatts, or its proportionate share of that limit. The bill would provide that the electricity purchased from a small-scale renewable distributed generation facility count toward meeting the electrical corporation's renewables portfolio standard and that electricity generated by the small-scale renewable distributed generation facility count toward meeting the electrical corporation's resource adequacy requirements. The bill would require the commission, in consultation with the ISO, to monitor and examine the impact on the transmission and distribution grid and any effects upon ratepayers resulting from small-scale renewable distributed generation facilities operating pursuant to the bill's provisions, would require the commission to establish performance standards for any small-scale renewable distributed generation facility that has a capacity greater than one megawatt to ensure that those facilities are constructed, operated, and maintained to generate the expected annual net production of electricity and do not impact system reliability, and would authorize the commission to reduce the 5

megawatt capacity limitation if the commission finds that a reduced capacity limitation is necessary to maintain system reliability within that electrical corporation's service territory. The bill would recast the existing authority of the commission to modify or adjust the above-described requirements for any electrical corporation with less than 100,000 service connections, as individual circumstances merit.

This bill would require a local publicly owned electric utility that sells electricity at retail to 75,000 or more customers to adopt and implement a tariff for electricity purchased from a small-scale renewable distributed generation facility meeting certain size, deliverability, and interconnection requirements and to consider certain factors. The bill would require the local publicly owned electric utility to make the tariff available to customers that own and operate a small-scale renewable distributed generation facility within the service territory of the utility, upon request, on a first-come-first-served basis, until the combined statewide cumulative rated generating capacity of those small-scale renewable distributed generation facilities, subject to tariffs with local publicly owned electric utilities, reaches 250 megawatts. The bill would provide that the electricity purchased from a small-scale renewable distributed generation facility count toward meeting the local publicly owned electric utility's renewables portfolio standard annual procurement targets.

(2) Existing law creates the California Consumer Power and Conservation Financing Authority, with powers and responsibilities as prescribed, including the issuance of revenue bonds, for the purposes of augmenting electric generating facilities and to ensure a sufficient and reliable supply of electricity, financing incentives for investment in cost-effective energy-efficient appliances and energy demand reduction, achieving a specified energy capacity reserve level, providing financing for the retrofit of inefficient electric powerplants, and renewable energy and conservation. Existing law creates in the State Treasury the California Consumer Power and Conservation Financing Authority Fund, and continuously appropriates all money in the fund, except as specified, for the support of the authority. Existing law prohibits the authority from approving any new program, enterprise, or project, on or after January 1, 2007, unless authority to approve such an activity is granted by statute enacted on or before January 1, 2007.

This bill would establish the Renewables Infrastructure Authority, with powers and responsibilities as prescribed, including the issuance of revenue bonds of up to \$6,400,000,000, for the purposes of financing projects and programs, as defined, to build eligible renewable energy resources and electric transmission lines, as defined, to deliver the electricity generated to retail customers. The authority would have a 9-member governing board, as prescribed. The bill would establish the Renewables Infrastructure Authority Fund and continuously appropriate moneys in the fund, except as specified, for the authority's purposes.

The bill would authorize the authority to designate an area as a renewable energy designation zone, as defined. Each city or county would be required to consider the designated zone when making a determination regarding a land use change within or adjacent to the zone that could affect its continuing viability to accommodate energy generation facilities, related transmission lines, transmission corridor zones, or other facilities appurtenant to the designated

zone. Notwithstanding provisions of law that give the Energy Commission authority to certify certain thermal powerplants and related facilities, the authority would have the authority to certify all sites and related facilities in a designated renewable energy designation zone, including new sites and related facilities and changes or additions to an existing facility.

The bill would authorize the authority to certify all electric transmission lines, remote resource interconnection lines, electric transmission facilities and facilities appurtenant thereto, and related facilities in the state, except any electric transmission lines or facilities appurtenant thereto for which the commission has issued a certificate of public convenience and necessity, or which any municipal utility has approved, before January 1, 2010, and electric transmission lines that connect generation facilities to the high-voltage transmission grid that are under the certification authority of the Energy Commission.

(3) 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 commission. Existing law 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 repeal these provisions of law, and would give to the Renewables Infrastructure Authority the authority to designate transmission corridor zones.

(4) Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime. Because some of the provisions of this bill would require an order or other action of the commission 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 specified reasons.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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

SECTION 1. Chapter 4.3 (commencing with Section 25330) of Division 15 of the Public Resources Code is repealed.

SEC. 2. 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.

~~After~~

(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. 3. 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 ~~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.~~  
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 percent of the electricity delivered to its retail customers from eligible renewable energy resources, as defined in Section 952, by December 31, 2015.

(3) Procures at least 35 percent of the electricity delivered to its retail customers from eligible renewable energy resources, as defined in Section 952, by December 31, 2020.

(4) Establishes a goal of procuring at least 50 percent of the electricity delivered to its retail customers from eligible renewable energy resources, as defined in Section 952, by December 31, 2035.

(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. 4. 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.

SEC. 5. Section 454.5 of the Public Utilities Code is amended to read:

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

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

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

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

(3) The duration of the plan.

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

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

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

(7) The upfront standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement

transaction will be known by the electrical corporation prior to execution of the transaction. This shall include an expedited approval process for the commission's review of proposed contracts and subsequent approval or rejection thereof. The electrical corporation shall propose alternative procurement choices in the event a contract is rejected.

(8) Procedures for updating the procurement plan.

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

(A) The electrical corporation will, in order to fulfill its unmet resource ~~needs and in furtherance of Section 701.3, until a 20 percent renewable resources portfolio is achieved, procure renewable energy resources with the goal of ensuring that at least an additional 1 percent per year of the electricity sold by the electrical corporation is generated from renewable energy resources, provided sufficient funds are made available pursuant to Sections 399.6 and 399.15, to cover the above market costs for new renewable energy resources~~ *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 Office of Ratepayer Advocates and other consumer groups that are nonmarket participants shall be provided access to this information under confidentiality procedures authorized by the commission.

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

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

(j) (1) Prior to its approval pursuant to Section 851 of any divestiture of generation assets owned by an electrical corporation on or after ~~the date of enactment of the act adding this section~~ *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 ~~the effective date of the act adding this subdivision~~ *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. 6. 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) In order to attain a target of generating 35 percent of total retail sales of electricity in California from eligible renewable energy resources by December 31, 2020, and the goal of generating 50 percent by December 31, 2035, and for the purposes of the Legislative goals of the renewables portfolios standard, the commission, the Energy Commission, and each local publicly owned electric utility shall implement the California Renewables Portfolio Standard Program described in this chapter.

(b) A renewables portfolio standard that requires each retail supplier of electricity in California to meet at least 35 percent of its retail sales of electricity in California from eligible renewable resources is necessary to:

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

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

(3) Stimulate sustainable economic development, encourage innovation in energy technologies, and create new employment opportunities.

(4) Increase fuel diversity and promote greater stability and predictability in electricity prices for consumers.

(c) Additional investments in electrical transmission infrastructure may be necessary to ensure reliability, relieve transmission congestion, and meet future growth in load and energy resources, including renewable energy resources.

(d) It is the policy of this state and the intent of the Legislature that adequate investments are made in a timely manner to facilitate the attainment of the renewable portfolio standard and to ensure that the state's electrical transmission system continues to operate in an efficient and reliable manner.

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

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

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

(c) "Eligible renewable energy resource" means an 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, 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) "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) (1) "Renewable energy credit" means a certificate of proof, issued through the accounting system established by the Energy Commission pursuant to Section 970, that one unit of electricity was generated and delivered by an eligible renewable energy resource.

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

(f) "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) "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) (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.

(i) "WECC" means the Western Electricity Coordinating Council.

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 the first point of connection to the transmission network within this state and electricity produced by the facility is delivered to an in-state location.

(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.

(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 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 only if it meets the following conditions:

(1) It is located in Stanislaus County and was operational prior to September 26, 1996.

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

(3) 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.

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

(5) The technology produces no hazardous wastes.

(6) 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.

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

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

(9) 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. This chapter shall become operative on January 1, 2011.

Article 2. Implementation of the Renewables Portfolio Standard for Retail Sellers of Electricity Regulated by, or Registered with, the Commission

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:

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

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

(3) Procure at least 35 percent of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, 2020.

(4) Establish a goal of procuring at least 50 percent of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, 2035.

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 for the rank ordering and selection of eligible renewable energy resources to comply with the renewables portfolio standard procurement requirement so that each 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.

(2) 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.

(c) 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) (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) 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 chapter by an electrical corporation.

(f) 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.

(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) 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.

963. (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 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.

(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 annual procurement targets established pursuant to this article. The cost limitation shall not exceed \_\_\_\_ 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 and other retail sellers to limit their procurement to the quantity of eligible renewable energy resources that can be procured at or below the benchmark prices.

(d) 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. (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.

965. 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 35 percent of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, 2020.

(4) Establishes a goal of procuring at least 50 percent of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, 2035.

(b) 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.

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

975. (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, 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 produced by eligible renewable energy resources. 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.

## Article 5. Renewable Energy Credits

980. (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) (1) Subject to the conditions of this article and the limits of paragraphs (2), (3), and (4), a retail seller or local publicly owned electric utility may use renewable energy credits from renewable energy resources that meet all the criteria for eligibility except the deliverability requirement of paragraph (2) of subdivision (b) of Section 953, that are certified by the Energy Commission pursuant to Article 4, to comply with the renewables portfolio standard procurement requirements.

(2) From January 1, 2011, until the commission establishes a reduced amount pursuant to paragraph (4), a retail seller or local publicly owned electric utility may meet up to 50 percent of its renewables portfolio standard procurement requirements with renewable energy credits that do not meet the deliverability requirement of

paragraph (2) of subdivision (b) of Section 953.

(3) On and after January 1, 2018, a retail seller or local publicly owned electric utility may meet up to 10 percent of its renewables portfolio standard procurement requirements with renewable energy credits that do not meet the deliverability requirement of paragraph (2) of subdivision (b) of Section 953.

(4) The commission shall identify interim targets to gradually decrease the use of renewable energy credits from the levels authorized in paragraph (2) to those authorized in paragraph (3).

(c) 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 (b) of Section 970, is operational, is capable of independently verifying the electricity generated by an eligible renewable energy resource and delivered to the retail seller or local publicly owned electric utility, 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.

(d) 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.

(e) 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.

(f) 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 (b) of Section 970 and included in the baseline quantity of eligible renewable energy resources of a purchasing retail seller pursuant to subdivision (b) of Section 960.

(g) 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 (b) of Section 970 and count toward the renewables portfolio standard procurement requirements of the purchasing retail seller or local publicly owned electric utility.

(h) 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.

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

Article 6. Small-Scale Renewable Distributed Generation Facilities

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

(a) The state should encourage the reduction of electricity demand at customer sites and increase generating capacity in order to meet the demand for electricity.

(b) Some tariff structures and regulatory structures are presenting a barrier to meeting the requirements and goals of this chapter.

(c) Small projects of less than five megawatts that are otherwise eligible renewable energy resources may face difficulties in participating in competitive solicitations under the California Renewables Portfolio Standard Program (Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code).

(d) A tariff that allows customers of electrical corporations and local publicly owned electric utilities to sell electricity generated by renewable technologies would address these barriers and could assist in the achievement of the renewables portfolio standard and the state's goals for reducing emissions of greenhouse gases pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code).

(e) A tariff for electricity generated by renewable technologies should recognize the environmental attributes of the renewable technology, the characteristics that contribute to peak electricity demand reduction, reduced transmission congestion, avoided transmission and distribution improvements, and in a manner that accelerates the deployment of renewable energy resources.

(f) It is the policy of this state and the intent of the Legislature to encourage the distributed generation of electricity from small-scale eligible renewable energy resources at the sites where the electricity will be utilized.

986. As used in this article, "small-scale renewable distributed generation facility" means an electric generation facility, owned, leased, or rented by a retail customer of a retail seller or local publicly owned electric utility, that meets all of the following criteria:

(a) Has an effective capacity of not more than five megawatts and is located on property owned or under the control of the customer. Premises that are leased by the customer are under the control of the customer for purposes of this requirement. It is not required that the customer own the electric generation facility.

(b) Is interconnected and operates in parallel with the electric transmission and distribution grid.

(c) Is strategically located and interconnected to the electric transmission system in a manner that optimizes the deliverability of electricity generated at the facility to load centers.

(d) Is an eligible renewable energy resource.

987. (a) Every electrical corporation shall file with the commission a standard tariff for electricity purchased from an electric generation facility.

(b) The tariff shall provide for a base payment rate for every

kilowatthour of electricity purchased from a small-scale renewable distributed generation facility at the benchmark price as determined by the commission pursuant to Section 963 for a period of 10, 15, or 20 years, as authorized by the commission. The commission may adjust the payment rate to reflect the value of every kilowatthour of electricity generated on a time-of-delivery basis and any other attributes of renewable generation. The commission shall ensure that ratepayers that do not receive service pursuant to the tariff are indifferent, with respect to rates and charges, to whether a ratepayer with a small-scale renewable distributed generation facility receives service pursuant to the tariff.

(c) Every electrical corporation shall make this tariff available to customers that own, lease, or rent a small-scale renewable distributed generation facility within the service territory of the electrical corporation, upon request, on a first-come-first-served basis, until the combined statewide cumulative rated generating capacity of those facilities reaches 500 megawatts. An electrical corporation may make the terms of the tariff available to customers in the form of a standard contract subject to commission approval. Each electrical corporation shall only be required to offer service or contracts under this section until that electrical corporation meets its proportionate share of the 500 megawatts based on the ratio of its peak demand to the total statewide peak demand.

(d) Every kilowatthour of electricity purchased from the electric generation facility shall count toward the electrical corporation's renewables portfolio standard annual procurement targets for purposes of this chapter.

(e) The electricity generated by a small-scale renewable distributed generation facility, consistent with Section 380, shall count toward the electrical corporation's resource adequacy requirement.

(f) (1) The commission, in consultation with the Independent System Operator, shall monitor and examine the impact on the transmission and distribution grid and any effects upon ratepayers resulting from small-scale renewable distributed generation facilities operating pursuant to a tariff or contract approved by the commission pursuant to this section.

(2) The commission shall establish performance standards for any small-scale renewable distributed generation facility that has a capacity greater than one megawatt to ensure that those facilities are constructed, operated, and maintained to generate the expected annual net production of electricity and do not impact system reliability.

(g) (1) The commission may modify or adjust the requirements of this section for any electrical corporation with less than 100,000 service connections, as individual circumstances merit.

(2) The commission may reduce the five megawatt capacity limitation of subdivision (a) of Section 986, if the commission finds that a reduced capacity limitation is necessary to maintain system reliability within that electrical corporation's service territory.

(h) (1) A customer electing to receive service under a tariff or contract approved by the commission shall continue to receive service under the tariff or contract until either of the following occurs:

(A) The customer no longer meets the eligibility requirements for receiving service pursuant to the tariff or contract.

(B) The period of service established by the commission pursuant

to subdivision (b) is completed.

(2) Upon completion of the period of service established by the commission pursuant to subdivision (b), the customer may elect to renew receiving service pursuant to the tariff or contract approved by the commission for the period of time then established by the commission, or may elect to receive service under another then applicable tariff.

988. (a) A local publicly owned electric utility that sells electricity at retail to 75,000 or more customers shall adopt a standard tariff for electricity purchased from a small-scale renewable distributed generation facility.

(b) The governing board of the local publicly owned electric utility shall ensure that the tariff adopted pursuant to subdivision (b) reflects the value of every kilowatthour of electricity generated on a time-of-delivery basis. The governing board may adjust this value based on the other attributes of renewable generation. The governing board shall ensure that ratepayers that do not receive service pursuant to the tariff are indifferent, with respect to rates and charges, to whether a ratepayer with a small-scale renewable distributed generation facility receives service pursuant to the tariff.

(c) A local publicly owned electric utility that sells electricity at retail to 75,000 or more customers shall make the tariff available to customers that own, lease, or rent a small-scale renewable distributed generation facility within the service territory of the utility, upon request, on a first-come-first-served basis, until the combined statewide cumulative rated generating capacity of those facilities reaches 250 megawatts. A local publicly owned electric utility may make the terms of the tariff available to customers in the form of a standard contract. A local publicly owned electric utility is only required to offer service or contracts under this section until the utility meets its proportionate share of the 250 megawatts based on the ratio of its peak demand to the total statewide peak demand.

(d) Every kilowatthour of electricity purchased from the a small-scale renewable distributed generation facility shall count toward the local publicly owned electric utility's renewables portfolio standard procurement requirements for purposes of this chapter.

(e) A local publicly owned electric utility may establish performance standards for any small-scale renewable distributed generation facility that has a capacity greater than one megawatt to ensure that those facilities are constructed, operated, and maintained to generate the expected annual net production of electricity and do not impact system reliability.

(f) A local publicly owned electric utility may reduce the five megawatt capacity limitation of subdivision (a) of Section 986, if the utility finds that a reduced capacity limitation is necessary.

#### Article 7. Renewables Infrastructure Authority

990. (a) The Legislature finds and declares that in order to furnish the citizens of California with a reliable and affordable supply of electricity that integrates electricity generated from eligible renewable energy resources consistent with the renewables portfolio standard, and to protect the public health, welfare, and

safety, the state needs to finance, purchase, lease, own, operate, acquire, or otherwise provide financial assistance for public and private facilities for the generation and transmission of electricity generated from eligible renewable energy resources.

(b) As used in this article, the following terms have the following meanings:

(1) "Authority" means the Renewables Infrastructure Authority established pursuant to Section 991 and any board, commission, department, or officer succeeding to the functions thereof, or to whom the powers conferred upon the authority by this article shall be given by law.

(2) "Board" means the Board of Directors of the Renewables Infrastructure Authority.

(3) "Bond purchase agreement" means a contractual agreement executed between the authority and an underwriter or underwriters and, where appropriate, a participating party, whereby the authority agrees to sell bonds issued pursuant to this article.

(4) "Bonds" means bonds, including structured, senior, and subordinated bonds or other securities; loans; notes, including bond revenue or grant anticipation notes; certificates of indebtedness; commercial paper; floating rate and variable maturity securities; and any other evidences of indebtedness or ownership, including certificates of participation or beneficial interest, asset backed certificates, or lease-purchase or installment purchase agreements, whether taxable or excludable from gross income for state and federal income taxation purposes.

(5) "Cost," as applied to a program, project, or portion thereof financed under this article, means all or any part of the cost of construction, improvement, repair, reconstruction, renovation, and acquisition of all lands, structures, improved or unimproved real or personal property, rights, rights-of-way, franchises, licenses, easements, and interests acquired or used for a project; the cost of demolishing or removing or relocating any buildings or structures on land so acquired, including the cost of acquiring any lands to which the buildings or structures may be moved; the cost of all machinery and equipment; financing charges; the costs of any environmental mitigation; the costs of issuance of bonds or other indebtedness; interest prior to, during, and for a period after, completion of the project, as determined by the authority; provisions for working capital; reserves for principal and interest; reserves for reduction of costs for loans or other financial assistance; reserves for maintenance, extension, enlargements, additions, replacements, renovations, and improvements; and the cost of architectural, engineering, financial, appraisal, and legal services, plans, specifications, estimates, administrative expenses, and other expenses necessary or incidental to determining the feasibility of any project, enterprise, or program or incidental to the completion or financing of any project or program.

(6) "Electric transmission line" means any electrical powerline carrying electricity from a powerplant or renewable energy designation zone located within the state to a point of junction with any interconnected transmission system. Electric transmission line may include any high-voltage electric transmission line pursuant to Section 25330 of the Public Resources Code, and any replacement on the site of existing electrical powerlines with electrical powerlines equivalent to those existing electrical powerlines or the placement of new or additional conductors, insulators, or accessories related

to those electrical powerlines on supporting structures in existence on January 1, 2010, or certified pursuant to this article. Electric transmission line may also include a remote resource interconnection line to accommodate proposed location-constrained generation in a designated renewable energy designation zone.

(7) "Enterprise" means a revenue-producing improvement, building, system, plant, works, facilities, or undertaking used for or useful for the generation or production of electricity for lighting, heating, and power for public or private uses. Enterprise includes, but is not limited to, all parts of the enterprise, all appurtenances to it, lands, easements, rights in land, water rights, contract rights, franchises, buildings, structures, improvements, equipment, and facilities appurtenant or relating to the enterprise.

(8) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(9) "Financial assistance" in connection with a project, enterprise or program, includes, but is not limited to, any combination of grants, loans, the proceeds of bonds issued by the authority, insurance, guarantees or other credit enhancements or liquidity facilities, and contributions of money, property, labor, or other things of value, as may be approved by resolution of the board; the purchase or retention of authority bonds, the bonds of a participating party for their retention or for sale by the authority, or the issuance of authority bonds or the bonds of a special purpose trust used to fund the cost of a project or program for which a participating party is directly or indirectly liable, including, but not limited to, bonds, the security for which is provided in whole or in part pursuant to the powers granted by this division; bonds for which the authority has provided a guarantee or enhancement; or any other type of assistance determined to be appropriate by the authority.

(10) "Fund" means the Renewables Infrastructure Authority Fund created pursuant to Section 995.

(11) "Loan agreement" means a contractual agreement executed between the authority and a participating party that provides that the authority will loan funds to the participating party and that the participating party will repay the principal and pay the interest and redemption premium, if any, on the loan.

(12) "Participating party" means either of the following:

(A) Any person, company, corporation, partnership, firm, federally recognized California Indian tribe, or other entity or group of entities, whether organized for profit or not for profit, engaged in business or operations within the state and that applies for financial assistance from the authority for the purpose of implementing a project or program in a manner prescribed by the authority.

(B) Any subdivision of the state or local government, including, but not limited to, departments, agencies, commissions, cities, counties, nonprofit corporations, special districts, assessment districts, and joint powers authorities within the state or any combination of these subdivisions, that has, or proposes to acquire, an interest in a project, or that operates or proposes to operate a program and that makes application to the authority for financial assistance in a manner prescribed by the authority.

(13) "Program" means a loan program that provides financial assistance to a participating party to use for the purchase or lease

of eligible renewable energy resources.

(14) "Project" means plants, facilities, equipment, appliances, structures, expansions, and improvements within the state that serve the purposes of this article as approved by the authority, and all activities and expenses necessary to initiate and complete those projects.

(15) "Renewable energy designation zone" means the geographic area necessary to accommodate the construction and operation of one or more powerplants or other form of generation that operate using an "eligible renewable energy resource" as defined in Section 952 and where the backup fuel, such as oil and natural gas, does not, in the aggregate, exceed 10 percent of the total energy output of the facility during any calendar year period. A renewable energy designation zone shall accommodate existing land uses and land uses identified in local, general, or specific plans, and avoid environmental constraints or mitigate potential environmental impacts.

(16) "Revenues" means all receipts, purchase payments, loan repayments, lease payments, rents, fees and charges, and all other income or receipts derived by the authority from an enterprise, or by the authority or a participating party from any other financing arrangement undertaken by the authority or a participating party, including, but not limited to, all receipts from a bond purchase agreement, and any income or revenue derived from the investment of any money in any fund or account of the authority or a participating party.

(17) "State" means the State of California.

(18) "Transmission corridor zone" means the geographic area necessary to accommodate the construction and operation of one or more high-voltage electric transmission lines. A transmission corridor zone shall not be more than 1,500 feet in width unless required to accommodate existing land uses and land uses identified in local, general, or specific plans, or to avoid environmental constraints or mitigate potential environmental impacts.

(c) Any action taken pursuant to this division is exempt from the Administrative Procedure Act, as defined in Section 11370 of the Government Code.

991. (a) There is hereby created in the state government the Renewables Infrastructure Authority, which shall be responsible for administering this article. The authority shall implement the purposes of this chapter and to that end, finance projects and programs in pursuant to this article, all to the mutual benefit of the people of the state and to protect their health, welfare, and safety.

(b) The authority shall be governed by a nine-member board of directors that shall consist of the following persons:

- (1) The Secretary for Resources.
- (2) Secretary for Environmental Protection.
- (3) Chair of the Energy Commission.
- (4) President of the commission.

(5) A member of the public appointed by the Governor and subject to confirmation by the Senate. This member shall have considerable experience in power generation, natural gas transportation or storage, energy conservation, financing, or ratepayer advocacy.

(6) The State Treasurer.

(7) The president of the Independent System Operator governing board.



(8) A designee of the Senate Pro Tem, who shall be a nonvoting member.

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

(c) A quorum is necessary for any action to be taken by the board. Five of the members shall constitute a quorum, and the affirmative vote of four board members shall be necessary for any action to be taken by the board.

(d) (1) The chairperson of the board shall be appointed by the Governor.

(2) Except as provided in this subdivision, the members of the board shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties to the extent that reimbursement for these expenses is not otherwise provided or payable by another public agency, and shall receive one hundred dollars (\$100) for each full day of attending meetings of the authority.

991.1. (a) The authority is authorized and empowered to do any of the following:

(1) Adopt an official seal.

(2) Sue and be sued in its own name.

(3) Employ or contract with officers and employees to administer the authority. The authority may contract for the services of a chief executive officer, who shall serve at the pleasure of the board. If the chief executive officer contracts for the services of any other officer or employee, the contract shall be subject to the approval of the board.

(4) Exercise the power of eminent domain.

(5) Adopt rules and regulations for the regulation of its affairs and the conduct of its business.

(6) Do all things generally necessary or convenient to carry out its powers and purposes under this article.

(b) The chief executive officer shall manage and conduct the business and affairs of the authority and the fund subject to the direction of the board. Except as otherwise provided in this section, the board may assign to the executive director, by resolution, those duties generally necessary or convenient to carry out its powers and purposes under this article. The chief executive office may designate a liaison to the federal government to facilitate, when necessary, the implementation of its powers and duties. Any action involving final approval of any bonds, notes, loans, or other financial assistance shall require the approval of a majority of the members of the board.

991.2. (a) The authority's operating budget shall be subject to review and appropriation in the annual Budget Act. For purposes of this section, the authority's operating budget shall include the costs of personnel, administration, and overhead.

(b) The authority shall, on or before January 1 of each year, prepare and submit to the Governor, the Chairperson of the Joint Legislative Budget Committee, and the chairperson of the committee in each house that considers appropriations, a report regarding its activities and expenditures pursuant to this article.

(c) The Bureau of State Audits shall perform an evaluation of the effectiveness of the authority's efforts in achieving its purposes as described in Section 991.3. The evaluation shall include recommendations as to whether there is a continued need for the authority beyond January 1, 2016. The evaluation shall be submitted

to the Governor and the Legislature on or before January 1, 2014.

991.3. The authority may only exercise its powers pursuant to this article for the following purposes:

(a) Establish, finance, purchase, lease, own, operate, acquire, or construct generating facilities that are eligible renewable energy resources and other projects and enterprises to facilitate the state's renewable energy goals, on its own or through agreements with public and private third parties or joint ventures with public or private entities, or provide financial assistance for projects or programs by participating parties, to supplement private and public sector supplies of electricity, taking into account generation facilities in operation or under development as of the effective date of this section, and to ensure a sufficient and reliable supply of electricity for California's consumers at just and reasonable rates.

(b) Finance programs, administered by the Energy Commission, the commission, and other approved participating parties for consumers and businesses to invest in cost-effective energy efficient appliances, eligible renewable energy resources, and other programs that will reduce the demand for energy in California or meet that demand through generation from eligible renewable energy resources.

(c) Achieve an adequate energy reserve capacity in California.

(d) Provide financing for owners of aged, inefficient, eligible renewable energy resources to perform necessary retrofits to improve the efficiency and environmental performance of those resources.

991.4. The authority may enter into any agreement or contract, execute any instrument, and perform any act or thing necessary or convenient to, directly or indirectly, secure the authority's bonds or a participating party's obligations to the authority, including, but not limited to, bonds of a participating party purchased by the authority for retention or sale, with funds or moneys that are legally available and that are due or payable to the participating party by reason of any grant, allocation, apportionment, or appropriation of the state or agencies thereof, to the extent that the Controller shall be the custodian at any time of these funds or moneys, or with funds or moneys that are or will be legally available to the participating party, the authority, or the state or any agencies thereof by reason of any grant, allocation, apportionment, or appropriation of the federal government or agencies thereof; and in the event of written notice that the participating party has not paid or is in default on its obligations to the authority, direct the Controller to withhold payment of those funds or moneys from the participating party over which it is or will be custodian and to pay the same to the authority or its assignee, or direct the state or any agencies thereof to which any grant, allocation, apportionment, or appropriation of the federal government or agencies thereof is or will be legally available to pay the same upon receipt to the authority or its assignee, until the default has been cured and the amounts then due and unpaid have been paid to the authority or its assignee, or until arrangements satisfactory to the authority have been made to cure the default.

991.5. (a) The fiscal powers granted to the authority by this article may be exercised without regard or reference to any other department, division, or agency of the state, except the Legislature or as otherwise stated in this article. This article shall be deemed to provide an alternative method of doing the things authorized by this article, and shall be regarded as supplemental and additional to powers conferred by other laws.

(b) No member of the board or any person executing bonds of the authority pursuant to this article shall be personally liable on the bonds or subject to any personal liability or accountability by reason of the issuance thereof.

(c) All expenses incurred in connection with any enterprise or project in carrying out this article shall be payable solely from funds provided under the authority of this article and no liability or obligation shall be imposed upon the State of California and, none shall be incurred by the authority beyond the extent to which moneys shall have been provided under this article. Under no circumstances shall the authority create any debt, liability, or obligation on the part of the State of California in connection with any enterprise or project payable from any source whatsoever other than the moneys provided under this article.

991.6. In connection with an enterprise, the authority may do any or all of the following:

(a) Acquire any enterprise by gift, purchase, or eminent domain as necessary to achieve the purposes of the authority pursuant to Sections 991.3 and 992.1.

(b) Construct or improve any enterprise. By gift, lease, purchase, eminent domain, or otherwise, it may acquire any real or personal property, for an enterprise, except that no property of a state public body may be acquired without its consent. The authority may sell, lease, exchange, transfer, assign, or otherwise dispose of any real or personal property or any interest in such property. It may lay out, open, extend, widen, straighten, establish, or change the grade of any real property or public rights-of-way necessary or convenient for any enterprise.

(c) Operate, maintain, repair, or manage all or any part of any enterprise, including the leasing for commercial purposes of surplus space or other space that is not economic to use for such enterprise.

(d) Adopt reasonable rules or regulations for the conduct of the enterprise.

(e) Prescribe, revise, and collect charges for the services, facilities, or energy furnished by the enterprise. The charges shall be established and adjusted so as to provide funds sufficient with other revenues and moneys available therefor, if any, to (1) pay the principal of, and interest on, outstanding bonds of the authority financing such enterprise as the same shall become due and payable, (2) create and maintain reserves, including, without limitation, operating and maintenance reserves and reserves required or provided for in any resolution authorizing, or trust agreement securing such bonds, and (3) pay operating and administrative costs of the authority.

(f) Execute all instruments, perform all acts, and do all things necessary or convenient in the exercise of the powers granted by this article.

991.7. In connection with a project, the authority may do any or all of the following:

(a) Determine the location and character of any project to be financed under this article.

(b) Acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip, own, maintain, manage, repair, operate, lease as lessee or lessor, or regulate any project to be financed under this article.

(c) Contract with any

participating party for the construction of a project by such participating party.

(d) Enter into leases and agreements, as lessor or lessee, with any participating party relating to the acquisition, construction, and installation of any project, including real property, buildings, equipment, and facilities of any kind or character.

(e) Establish, revise, charge and collect rates, rents, fees, and charges for a project. The rates, rents, fees, and charges shall be established and adjusted in respect to the aggregate rates, rents, fees, and charges from all projects so as to provide funds sufficient with other revenues and moneys available therefor, if any, to (1) pay the principal of and interest on outstanding bonds of the authority financing the project as the same shall become due and payable, (2) create and maintain reserves, including, without limitation, operating and maintenance reserves and reserves required or provided for in any resolution authorizing, or trust agreement securing the bonds, and (3) pay operating and administrative costs of the authority.

(f) Enter into contracts of sale with any participating party covering any project financed by the authority.

(g) As an alternative to leasing or selling a project to a participating party, finance the acquisition, construction, or installation of a project by means of a loan to the participating party.

(h) Execute all instruments, perform all acts, and do all things necessary or convenient in the exercise of the powers granted by this article.

991.8. In connection with the purposes of this article, the authority may charge and equitably apportion among participating parties or other public or private entities the authority's administrative costs and expenses, including operating and financing-related costs incurred in connection with an enterprise or a project. The authority shall recover those costs that are related to one of the authority's own enterprises or projects, in which case costs shall be included in the cost of generating and transmitting that electricity.

992. (a) All generation-related projects and enterprises financed pursuant to this article shall provide electricity to the consumers of this state at the cost of generating that electricity, including the costs of financing those projects or enterprises. To the extent that electricity is not needed in the state, or that it is financially advantageous to California consumers, the electricity may be sold outside the state at just and reasonable rates.

(b) If a participating party is an electrical corporation, the commission shall determine the cost of generating electricity and to which entities the electricity is sold.

(c) If a participating party is a local publicly owned electric utility seeking to provide electricity to consumers in its service territory, the governing board of that utility shall determine the cost of generating electricity and to which entities the electricity is sold.

(d) If neither subdivision (b) nor subdivision (c) applies, the authority shall determine the cost of generating electricity and to which entities the electricity is sold, consistent with subdivision (a).

992.1. In addition to the other powers provided in this article, the activities of the authority under this article are intended to

supplement private and public sector supplies of electricity generated from eligible renewable energy resources, taking into account generation facilities in operation or under development as of January 1, 2010, consistent with achieving reasonable energy capacity reserves.

992.2. The authority shall have the authority to receive and act on applications for financial assistance from renewable generators who commit to undertake capacity expansion through facility retrofits, new construction, or both, that will improve the efficiency and environmental performance of generation facilities that are eligible renewable energy resources.

992.4. (a) The authority may not invest in any nuclear facilities or develop additional hydroelectric facilities without first receiving specific statutory authorization to do so on a project-by-project basis.

(b) All generation facilities constructed or improved pursuant to this article shall comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

992.5. (a) If the authority determines that additional electric generation supply is required to meet the purposes of this chapter, the authority may undertake the following activities to ensure that the authority, or any participating party, is able to build, own, and operate generation facilities as part of a least cost electric supply policy:

(1) (A) Identify suitable sites or renewable energy designation zones for the construction of generation facilities, taking into account fuel supply, interconnection, community, feasibility, and environmental factors.

(B) The authority may designate a renewable energy designation zone on its own motion, by a motion by the Energy Commission, or by an application of a person who plans to construct an eligible renewable energy resource within the state. The designation of a renewable energy designation zone shall serve to identify a feasible region where one or more generation facilities that are eligible renewable energy resources may be built that are consistent with the state's needs and objectives as set forth in the Renewables Investment Plan adopted pursuant to Section 994.

(C) In addition to designating zones, the authority may rank renewable energy designation zones based on the following criteria:

(i) Total capacity of generation projects that are in the Independent System Operator generation queue for each of the renewable energy designation zones.

(ii) Fuel diversity.

(iii) Distance to the nearest possible Independent System Operator transmission bulk facility.

(iv) Potential viable transmission route.

(v) Order of magnitude of transmission cost per megawatt for the designated renewable energy designation zone to deliver electricity from renewable generators to the load centers.

(vi) Realistic commercial operating dates for location-constrained projects and the transmission interconnection facilities.

(vii) Potential impact on the transmission access charge.

(viii) Potential operational, congestion, and reliability benefits of the facility.

(ix) Stranded cost risk and potential impact.

(x) Alternative means of transmission access from the renewable energy designation zone to the Independent System Operator grid.

(D) The authority shall arrange for the publication of a summary of any application made for designation in a newspaper of general circulation in each county where the proposed renewable energy designation zone would be located, and shall notify all property owners within, or adjacent to, the renewable energy designation zone. The authority shall transmit a copy of the application for designation to all cities, counties, and state and federal agencies having an interest in the proposed renewable energy designation zone. The authority shall publish the application for designation on its Internet Web site, and notify members of the public that the application is available on the authority's Internet Web site.

(E) As soon as practicable after the authority designates a renewable energy designation zone, it shall do both of the following:

(i) Post a copy of its decision on its Internet Web site and cause a summary of the notice to be published in a newspaper of general circulation in each county in which the renewable energy designation zone and related facilities, or any part thereof, designated in the notice are proposed to be located.

(ii) Send a copy of its decision, including a description of the renewable energy designation zone to each affected city, county, state agency, and federal agency, and notify property owners within or adjacent to the renewable energy designation zone of the availability of the decision on the authority's Internet Web site.

(F) After receiving notice from the authority regarding the designation or revision of a renewable energy designation zone within its jurisdiction, each city or county shall consider the designated zone when making a determination regarding a land use change within or adjacent to the zone that could affect its continuing viability to accommodate generation facilities, related transmission lines, transmission corridor zones, or other facilities appurtenant to the designated zone. Upon receiving the authority's notification of a proposed renewable energy designation zone, a city or county may request a fee from the authority to cover the actual added costs of this review and the authority shall pay this amount to the city or county.

(G) After the authority designates a renewable energy designation zone, it shall identify that zone in its subsequent Renewables Investment Plans adopted pursuant to Section 994. The Energy Commission shall display the renewable energy designation zone in the strategic plans adopted pursuant to Section 25324 of the Public Resources Code.

(H) If, upon regular review or at any other time, the authority finds that a renewable energy designation zone designation is no longer needed, the authority shall revise or repeal the designation and, as soon as practicable, notify the affected cities, counties, state and federal agencies, and property owners within, or adjacent to, the renewable energy designation zone.

(2) (A) Notwithstanding Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code, certify all sites and related facilities for all generation facilities that are eligible renewable energy resources, and facilities appurtenant thereto, that are within the state that have a minimum generating capacity of 5 megawatts, including, but not limited to, all generation facilities in a designated renewable energy designation zone, including new sites and related facilities and changes or additions to an existing facility.

(B) The issuance of a certificate by the authority 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 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.

(C) The authority shall determine within 30 days of the application to construct a generation facility within a designated renewable energy designation zone whether the application is complete.

(D) If the notice or application is determined to be complete, the authority shall conduct all applicable public and community involvement processes. After the conclusion of hearings, and no later than 180 days after the date of determination of whether the application is complete, the authority shall issue a proposed decision that contains its findings and conclusions regarding all of the following matters:

(i) Conformity of the proposed generation facility and related facilities with the Renewables Investment Plan adopted pursuant to Section 994.

(ii) Suitability of the proposed generation facility and related facilities with respect to environmental, public health and safety, land use, economic, and transmission-system impacts.

(iii) Mitigation measures and alternatives as may be needed to protect environmental quality, public health and safety, the state's electrical transmission grid, or any other relevant matter.

(iv) Other factors that the authority considers relevant.

(E) The authority shall issue its final decision on certification within six months of the date the authority determined that the application was complete.

(3) Secure rights to the sites or renewable energy designation zones identified, including, but not limited to, fee simple acquisition, leaseholds, or options.

(4) Conduct any studies that may be necessary to construct and operate generation facilities at the site that are eligible renewable energy resources, including, but not limited to, environmental, engineering, or feasibility studies. The designation of a renewable energy designation zone is subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). The authority shall be the lead agency for all generation projects proposed in the designated zone. When deemed feasible, the authority shall prepare a master environmental impact report for a designated zone.

(5) Conduct, in coordination with the Energy Commission, all applicable public and community involvement processes.

(6) Apply for permits, licenses, or other local, state, or federal approvals, including, but not limited to, compliance with the applicable procedures of the Energy Commission.

(b) The authority may request proposals from qualified participating parties to purchase, lease, or otherwise acquire sites for the purpose of developing generation facilities that are eligible renewable energy resources and that will provide the lowest cost electricity to consumers over the life of the facilities, consistent with Section 992. If after 45 days following a request for proposals, or 45 days after notification pursuant to subparagraph (E) of paragraph (1) of subdivision (a), if the authority determines it is

necessary and feasible, the authority shall exercise its authority to build, own, and operate generation facilities as part of a least cost electrical supply policy.

(c) The authority shall comply with all applicable air quality laws and all environmental regulations.

993. (a) In accordance with the provisions of this article and notwithstanding any other provision of law, the authority shall, except as provided in subdivision (e), have the exclusive power to certify all electric transmission lines, remote resource interconnection lines, electric transmission facilities and facilities appurtenant thereto, and related facilities in the state, including new electric transmission lines or transmission corridor zones and related facilities or changes or additions to existing electric transmission lines.

(b) The issuance of a certificate by the authority 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.

(c) On or after January 1, 2011, no facility or line described in subdivision (a) shall commence without first obtaining certification for that site and related facility by the authority.

(d) The authority shall certify sufficient sites and related facilities which are required for the transmission of electricity sufficient to accommodate the generation projected in the most recent designation of a renewable energy designation zone, adopted pursuant to Section 992.5.

(e) (1) This section does not apply to any electric transmission lines or facilities appurtenant thereto for which the commission has issued a certificate of public convenience and necessity, or which any local publicly owned electric utility has approved, before January 1, 2011.

(2) This section does not apply to electric transmission lines that connect generation facilities to the high-voltage transmission grid that are under the siting authority of the Energy Commission, pursuant to Section 25500 of the Public Resources Code.

993.4. (a) The authority may not invest in any electric transmission lines without first receiving specific statutory authorization to do so on a project-by-project basis.

(b) All electric transmission lines constructed or improved pursuant to this division shall comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

993.5. (a) If the authority determines that an additional electric transmission line is required to meet the purposes of this chapter, the authority may undertake the following activities to ensure that the authority, or any participating party, is able to build, own, and operate transmission lines as part of a least cost electric supply policy:

(1) Identify suitable sites for the construction of electric transmission lines, taking into account the designation of a renewable energy designation zone, interconnection, community, feasibility, and environmental factors.

(2) Identify the site for an electric transmission line or a transmission corridor zone on its own motion, by a motion by the Energy Commission, or by application of a person who plans to



construct an electric transmission line within the state. The designation of a site for an electric transmission line or a transmission corridor zone shall serve to identify a feasible corridor where one or more future electric transmission lines can be built that are consistent with the state's needs and objectives as set forth in the Renewables Investment Plan adopted pursuant to Section 994.

(3) Require an application to site the electric transmission line be submitted to the authority. The application shall be in the form prescribed by the authority, shall be supported by any information that the authority may require, and shall require a showing that the site being applied for is consistent with the Renewables Investment Plan adopted pursuant to Section 994.

(4) Secure rights to the sites identified, including, but not limited to, fee simple acquisition, leaseholds, or options.

(5) Conduct any studies that may be necessary to construct and operate electric transmission lines and transmission corridor zones, including, but not limited to, environmental, engineering, or feasibility studies. The designation of the site for an electric transmission line and facilities appurtenant thereto or transmission corridor zones is subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). The authority shall be the lead agency for all electric transmission lines and facilities appurtenant thereto and transmission corridor zones pursuant to this chapter. The authority shall conduct a programmatic environmental impact report, for each designated electric transmission line.

(6) Conduct, in coordination with the Energy Commission, all applicable public and community involvement processes.

(7) Apply for permits, licenses, or other local, state, or federal approvals, including, but not limited to, compliance with the applicable procedures of the Energy Commission.

(8) (A) Utilize the bond authority provided in this division, under terms and conditions approved by the authority, to acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip, own, maintain, manage, repair, operate, lease as lessee or lessor, or regulate electric transmission lines.

(B) The rates, rents, fees, and charges associated with the investment in electric transmission lines shall be established and adjusted to ensure compliance with subdivision (e) of Section 991.7.

(8) Request proposals from qualified participating parties to purchase, lease, or otherwise acquire sites for the purpose of developing electric transmission facilities that will provide the lowest cost power to consumers over the life of the facilities, consistent with Section 992.

(b) When considering whether to designate a site for an electric transmission line and facilities appurtenant thereto or transmission corridor zones pursuant to this section, the authority 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 designation. The authority 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. The authority shall not propose any facility within the jurisdiction of a California Native American tribe without the approval of the California Native American tribe.

994. (a) By January 1, 2011, and annually thereafter, the authority shall, in consultation with the Energy Commission and the Independent System Operator, develop a Renewables Investment Plan and submit that plan to the Governor and the Joint Legislative Budget Committee and the chairs of the policy committees with jurisdiction over energy policy in the State of California.

(b) The Renewables Investment Plan shall take into account California's anticipated needs, over the next decade, for electricity generated by eligible renewable energy resources and the need for transmission to deliver the electricity generated to retail customers. The plan shall address issues regarding adequacy of supply, storage, reliability of service, grid congestion, and environmental quality. In developing the investment plan, the authority shall compare the costs of various energy resources, including a comparison of the costs and benefits of demand reduction strategies with the costs and benefits of additional generation supply. The plan shall acknowledge the potential volatility of fossil fuel prices and the value of resources that avoid that price risk.

(c) The plan shall outline a strategy for cost-effective investments, using the financing powers provided to the authority by this article. The plan may recommend changes to the specific expenditure authority granted in this article in order to carry out the investment strategy contained in the plan.

(d) The plan shall be developed with input from interested parties at scheduled public hearings of the authority. The authority shall adopt the plan by majority vote of the board at a public meeting. The authority shall update the plan on a regular basis as determined by the authority.

(e) All investments made by the authority under this article shall be consistent with the strategy outlined in the Renewables Investment Plan. Nothing in this section shall preclude the authority from exercising its powers prior to the adoption of the initial Renewables Investment Plan.

(f) The authority shall be the agency responsible for ensuring that the investment strategy outlined in the Renewables Investment Plan is implemented. To that end, the authority may, on its own or through a partnership with a participating party, make those investments necessary to ensure that the plan is implemented.

994.5. Nothing in this article shall be construed to obviate the need to review the roles, functions, and duties of other state energy oversight agencies and, where appropriate, change or consolidate those roles, functions, and duties. To achieve that efficiency, the Governor may propose to the Legislature a Governmental Reorganization Plan, pursuant to Section 8523 of the Government Code and Section 6 of Article V of the Constitution.

995. (a) There is hereby created in the State Treasury the Renewables Infrastructure Authority Fund for expenditure by the authority for the purpose of implementing the objectives and provisions of this article. For the purposes of subdivision (e), or as necessary or convenient to the accomplishment of any other purpose of the authority, the authority may establish within the fund additional and separate accounts and subaccounts.

(b) Except as provided in subdivision (a) of Section 991.2, all moneys in the fund that are not General Fund moneys are continuously appropriated to the authority and may be used for any reasonable costs that may be incurred by the authority in the exercise of its powers under this article.

(c) The fund, on behalf of the authority, may borrow or receive moneys from the authority, or from any federal, state, or local agency or private entity, to create reserves in the fund as provided in this article and as authorized by the board.

(d) The authority may pledge any or all of the moneys in the fund (including in any account or subaccount) as security for payment of the principal of, and interest on, any particular issuance of bonds issued pursuant to this article.

(e) The authority, may, from time to time, direct the Treasurer to invest moneys in the fund that are not required for the authority's current needs, including proceeds from the sale of any bonds, in any securities permitted by law as the authority shall designate. The authority also may direct the Treasurer to deposit moneys in interest-bearing accounts in state or national banks or other financial institutions having principal offices in this state. The authority may alternatively require the transfer of moneys in the fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of the Government Code. All interest or other increment resulting from an investment or deposit shall be deposited in the fund, notwithstanding Section 16305.7 of the Government Code. Moneys in the fund shall not be subject to transfer to any other fund pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4 of the Government Code, excepting the Surplus Money Investment Fund.

996. For the purposes provided in this division, the authority is authorized to incur indebtedness and to issue securities of any kind or class, at public or private sale by the Treasurer, and to renew the same, provided that all such indebtedness, howsoever evidenced, shall be payable solely from revenues. The authority may issue bonds for the purposes of this division in an amount not to exceed six billion, four hundred million dollars (\$6,400,000,000), exclusive of any refundings.

996.1. In addition to the powers otherwise provided in this article, the authority may, in connection with the issuance of bonds, do all of the following:

(a) Issue, from time to time, bonds payable from and secured by a pledge of all or any part of the revenues in order to finance the activities authorized by this article, including, without limitation, an enterprise or multiple enterprises, a single project for a single participating party, a series of projects for a single participating party, a single project for several participating parties, or several projects for several participating parties, and to sell those bonds at public or private sale by the Treasurer, in the form and on those terms and conditions as the Treasurer, as agent for sale, shall approve.

(b) Pledge all or any part of the revenues to secure bonds and any repayment or reimbursement obligations of the authority to any provider of insurance or a guarantee of liquidity or credit facility entered into to provide for the payment or debt service on any bond.

(c) Employ and compensate bond counsel, financial consultants, underwriters, and other advisers determined necessary and appointed by the Treasurer in connection with the issuance and sale of any bond.

(d) Issue bonds to refund or purchase or otherwise acquire bonds on terms and conditions as the Treasurer, as agent for sale, shall approve.

(e) Perform all acts that relate to the function and purpose of the authority under this article, whether or not specifically designated.

996.2. Bonds issued under this article shall not be deemed to constitute a debt or liability of the state or of any political subdivision thereof, other than the authority, or a pledge of the faith and credit of the state or of any political subdivision, other than the authority, but shall be payable solely from the funds herein provided therefor. All bonds issued under this division shall contain on the face thereof a statement to the following effect: "Neither the faith and credit nor the taxing power of the State of California or any local agency is pledged to the payment of the principal of or interest on this bond." The issuance of bonds under this article shall not directly or indirectly or contingently obligate the state or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. Nothing in this section shall prevent nor be construed to prevent the authority from pledging its full faith and credit to the payment of bonds or issue of bonds authorized pursuant to this article.

996.5. The authority is authorized to obtain loans from the Pooled Money Investment Account pursuant to Sections 16312 and 16313 of the Government Code. These loans shall be subject to the terms negotiated with the Pooled Money Investment Board, including, but not limited to, a pledge of authority bond proceeds or revenues.

997. The authority may not finance or approve any new program, enterprise, or project on or after December 31, 2020, unless authority to approve such an activity is granted by statute enacted on or before January 1, 2021.

SEC. 7. 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.