

**Selected Legislation and  
Regulatory Mandates**

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- California AB 32 – Global Warming Solutions Act of 2006
- AB 1969, Yee. Electrical Corporations: Water Agencies (2006)
- SB 107, Simitian. Renewable energy: Public Interest Energy Research, Demonstration, and Development Program (2006)
- SB 380, Kehoe. Renewable Energy Resources (2008)
- Executive Order S-3-05 by Governor of the State of California
- CEQA Guidelines Section 15328 – Small Hydroelectric Categorical Exemption
- FERC Exemption of Small Hydroelectric Power Projects of 5 Megawatts or Less
- FERC Exemption of Small Conduit Hydroelectric Facilities

**Assembly Bill No. 32**

**CHAPTER 488**

An act to add Division 25.5 (commencing with Section 38500) to the Health and Safety Code, relating to air pollution.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 32, Nunez. Air pollution: greenhouse gases: California Global Warming Solutions Act of 2006.

Under existing law, the State Air Resources Board (state board), the State Energy Resources Conservation and Development Commission (Energy Commission), and the California Climate Action Registry all have responsibilities with respect to the control of emissions of greenhouse gases, as defined, and the Secretary for Environmental Protection is required to coordinate emission reductions of greenhouse gases and climate change activity in state government.

This bill would require the state board to adopt regulations to require the reporting and verification of statewide greenhouse gas emissions and to monitor and enforce compliance with this program, as specified. The bill would require the state board to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions levels in 1990 to be achieved by 2020, as specified. The bill would require the state board to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions, as specified. The bill would authorize the state board to adopt market-based compliance mechanisms, as defined, meeting specified requirements. The bill would require the state board to monitor compliance with and enforce any rule, regulation, order, emission limitation, emissions reduction measure, or market-based compliance mechanism adopted by the state board, pursuant to specified provisions of existing law. The bill would authorize the state board to adopt a schedule of fees to be paid by regulated sources of greenhouse gas emissions, as specified.

Because the bill would require the state board to establish emissions limits and other requirements, the violation of which would be a crime, this bill would create a state-mandated local program.

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

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

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

SECTION 1. Division 25.5 (commencing with Section 38500) is added to the Health and Safety Code, to read:

DIVISION 25.5. CALIFORNIA GLOBAL WARMING SOLUTIONS  
ACT OF 2006

PART 1. GENERAL PROVISIONS

CHAPTER 1. TITLE OF DIVISION

38500. This division shall be known, and may be cited, as the California Global Warming Solutions Act of 2006.

CHAPTER 2. FINDINGS AND DECLARATIONS

38501. The Legislature finds and declares all of the following:

(a) Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems.

(b) Global warming will have detrimental effects on some of California's largest industries, including agriculture, wine, tourism, skiing, recreational and commercial fishing, and forestry. It will also increase the strain on electricity supplies necessary to meet the demand for summer air-conditioning in the hottest parts of the state.

(c) California has long been a national and international leader on energy conservation and environmental stewardship efforts, including the areas of air quality protections, energy efficiency requirements, renewable energy standards, natural resource conservation, and greenhouse gas emission standards for passenger vehicles. The program established by this division will continue this tradition of environmental leadership by placing California at the forefront of national and international efforts to reduce emissions of greenhouse gases.

(d) National and international actions are necessary to fully address the issue of global warming. However, action taken by California to reduce emissions of greenhouse gases will have far-reaching effects by encouraging other states, the federal government, and other countries to act.

(e) By exercising a global leadership role, California will also position its economy, technology centers, financial institutions, and businesses to benefit from national and international efforts to reduce emissions of greenhouse gases. More importantly, investing in the development of innovative and pioneering technologies will assist California in achieving the 2020 statewide limit on emissions of greenhouse gases established by this division and will provide an opportunity for the state to take a global economic and technological leadership role in reducing emissions of greenhouse gases.

(f) It is the intent of the Legislature that the State Air Resources Board coordinate with state agencies, as well as consult with the environmental justice community, industry sectors, business groups, academic institutions, environmental organizations, and other stakeholders in implementing this division.

(g) It is the intent of the Legislature that the State Air Resources Board consult with the Public Utilities Commission in the development of emissions reduction measures, including limits on emissions of greenhouse gases applied to electricity and natural gas providers regulated by the Public Utilities Commission in order to ensure that electricity and natural gas providers are not required to meet duplicative or inconsistent regulatory requirements.

(h) It is the intent of the Legislature that the State Air Resources Board design emissions reduction measures to meet the statewide emissions limits for greenhouse gases established pursuant to this division in a manner that minimizes costs and maximizes benefits for California's economy, improves and modernizes California's energy infrastructure and maintains electric system reliability, maximizes additional environmental and economic co-benefits for California, and complements the state's efforts to improve air quality.

(i) It is the intent of the Legislature that the Climate Action Team established by the Governor to coordinate the efforts set forth under Executive Order S-3-05 continue its role in coordinating overall climate policy.

### CHAPTER 3. DEFINITIONS

38505. For the purposes of this division, the following terms have the following meanings:

(a) "Allowance" means an authorization to emit, during a specified year, up to one ton of carbon dioxide equivalent.

(b) "Alternative compliance mechanism" means an action undertaken by a greenhouse gas emission source that achieves the equivalent reduction of greenhouse gas emissions over the same time period as a direct emission reduction, and that is approved by the state board. "Alternative compliance mechanism" includes, but is not limited to, a

flexible compliance schedule, alternative control technology, a process change, or a product substitution.

(c) “Carbon dioxide equivalent” means the amount of carbon dioxide by weight that would produce the same global warming impact as a given weight of another greenhouse gas, based on the best available science, including from the Intergovernmental Panel on Climate Change.

(d) “Cost-effective” or “cost-effectiveness” means the cost per unit of reduced emissions of greenhouse gases adjusted for its global warming potential.

(e) “Direct emission reduction” means a greenhouse gas emission reduction action made by a greenhouse gas emission source at that source.

(f) “Emissions reduction measure” means programs, measures, standards, and alternative compliance mechanisms authorized pursuant to this division, applicable to sources or categories of sources, that are designed to reduce emissions of greenhouse gases.

(g) “Greenhouse gas” or “greenhouse gases” includes all of the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(h) “Greenhouse gas emissions limit” means an authorization, during a specified year, to emit up to a level of greenhouse gases specified by the state board, expressed in tons of carbon dioxide equivalents.

(i) “Greenhouse gas emission source” or “source” means any source, or category of sources, of greenhouse gas emissions whose emissions are at a level of significance, as determined by the state board, that its participation in the program established under this division will enable the state board to effectively reduce greenhouse gas emissions and monitor compliance with the statewide greenhouse gas emissions limit.

(j) “Leakage” means a reduction in emissions of greenhouse gases within the state that is offset by an increase in emissions of greenhouse gases outside the state.

(k) “Market-based compliance mechanism” means either of the following:

(1) A system of market-based declining annual aggregate emissions limitations for sources or categories of sources that emit greenhouse gases.

(2) Greenhouse gas emissions exchanges, banking, credits, and other transactions, governed by rules and protocols established by the state board, that result in the same greenhouse gas emission reduction, over the same time period, as direct compliance with a greenhouse gas emission limit or emission reduction measure adopted by the state board pursuant to this division.

(l) “State board” means the State Air Resources Board.

(m) “Statewide greenhouse gas emissions” means the total annual emissions of greenhouse gases in the state, including all emissions of greenhouse gases from the generation of electricity delivered to and consumed in California, accounting for transmission and distribution line losses, whether the electricity is generated in state or imported. Statewide emissions shall be expressed in tons of carbon dioxide equivalents.

(n) “Statewide greenhouse gas emissions limit” or “statewide emissions limit” means the maximum allowable level of statewide greenhouse gas emissions in 2020, as determined by the state board pursuant to Part 3 (commencing with Section 38850).

CHAPTER 4. ROLE OF STATE BOARD

38510. The State Air Resources Board is the state agency charged with monitoring and regulating sources of emissions of greenhouse gases that cause global warming in order to reduce emissions of greenhouse gases.

PART 2. MANDATORY GREENHOUSE GAS EMISSIONS REPORTING

38530. (a) On or before January 1, 2008, the state board shall adopt regulations to require the reporting and verification of statewide greenhouse gas emissions and to monitor and enforce compliance with this program.

(b) The regulations shall do all of the following:

(1) Require the monitoring and annual reporting of greenhouse gas emissions from greenhouse gas emission sources beginning with the sources or categories of sources that contribute the most to statewide emissions.

(2) Account for greenhouse gas emissions from all electricity consumed in the state, including transmission and distribution line losses from electricity generated within the state or imported from outside the state. This requirement applies to all retail sellers of electricity, including load-serving entities as defined in subdivision (j) of Section 380 of the Public Utilities Code and local publicly owned electric utilities as defined in Section 9604 of the Public Utilities Code.

(3) Where appropriate and to the maximum extent feasible, incorporate the standards and protocols developed by the California Climate Action Registry, established pursuant to Chapter 6 (commencing with Section 42800) of Part 4 of Division 26. Entities that voluntarily participated in the California Climate Action Registry prior to December 31, 2006, and have developed a greenhouse gas emission reporting program, shall not be required to significantly alter their reporting or verification program except as necessary to ensure that reporting is complete and verifiable for the purposes of compliance with this division as determined by the state board.

(4) Ensure rigorous and consistent accounting of emissions, and provide reporting tools and formats to ensure collection of necessary data.

(5) Ensure that greenhouse gas emission sources maintain comprehensive records of all reported greenhouse gas emissions.

(c) The state board shall do both of the following:

(1) Periodically review and update its emission reporting requirements, as necessary.

(2) Review existing and proposed international, federal, and state greenhouse gas emission reporting programs and make reasonable efforts to promote consistency among the programs established pursuant to this part and other programs, and to streamline reporting requirements on greenhouse gas emission sources.

#### PART 3. STATEWIDE GREENHOUSE GAS EMISSIONS LIMIT

38550. By January 1, 2008, the state board shall, after one or more public workshops, with public notice, and an opportunity for all interested parties to comment, determine what the statewide greenhouse gas emissions level was in 1990, and approve in a public hearing, a statewide greenhouse gas emissions limit that is equivalent to that level, to be achieved by 2020. In order to ensure the most accurate determination feasible, the state board shall evaluate the best available scientific, technological, and economic information on greenhouse gas emissions to determine the 1990 level of greenhouse gas emissions.

38551. (a) The statewide greenhouse gas emissions limit shall remain in effect unless otherwise amended or repealed.

(b) It is the intent of the Legislature that the statewide greenhouse gas emissions limit continue in existence and be used to maintain and continue reductions in emissions of greenhouse gases beyond 2020.

(c) The state board shall make recommendations to the Governor and the Legislature on how to continue reductions of greenhouse gas emissions beyond 2020.

#### PART 4. GREENHOUSE GAS EMISSIONS REDUCTIONS

38560. The state board shall adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions from sources or categories of sources, subject to the criteria and schedules set forth in this part.

38560.5. (a) On or before June 30, 2007, the state board shall publish and make available to the public a list of discrete early action greenhouse gas emission reduction measures that can be implemented prior to the measures and limits adopted pursuant to Section 38562.

(b) On or before January 1, 2010, the state board shall adopt regulations to implement the measures identified on the list published pursuant to subdivision (a).

(c) The regulations adopted by the state board pursuant to this section shall achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from those sources or categories of

sources, in furtherance of achieving the statewide greenhouse gas emissions limit.

(d) The regulations adopted pursuant to this section shall be enforceable no later than January 1, 2010.

38561. (a) On or before January 1, 2009, the state board shall prepare and approve a scoping plan, as that term is understood by the state board, for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from sources or categories of sources of greenhouse gases by 2020 under this division. The state board shall consult with all state agencies with jurisdiction over sources of greenhouse gases, including the Public Utilities Commission and the State Energy Resources Conservation and Development Commission, on all elements of its plan that pertain to energy related matters including, but not limited to, electrical generation, load based-standards or requirements, the provision of reliable and affordable electrical service, petroleum refining, and statewide fuel supplies to ensure the greenhouse gas emissions reduction activities to be adopted and implemented by the state board are complementary, nonduplicative, and can be implemented in an efficient and cost-effective manner.

(b) The plan shall identify and make recommendations on direct emission reduction measures, alternative compliance mechanisms, market-based compliance mechanisms, and potential monetary and nonmonetary incentives for sources and categories of sources that the state board finds are necessary or desirable to facilitate the achievement of the maximum feasible and cost-effective reductions of greenhouse gas emissions by 2020.

(c) In making the determinations required by subdivision (b), the state board shall consider all relevant information pertaining to greenhouse gas emissions reduction programs in other states, localities, and nations, including the northeastern states of the United States, Canada, and the European Union.

(d) The state board shall evaluate the total potential costs and total potential economic and noneconomic benefits of the plan for reducing greenhouse gases to California's economy, environment, and public health, using the best available economic models, emission estimation techniques, and other scientific methods.

(e) In developing its plan, the state board shall take into account the relative contribution of each source or source category to statewide greenhouse gas emissions, and the potential for adverse effects on small businesses, and shall recommend a de minimis threshold of greenhouse gas emissions below which emission reduction requirements will not apply.

(f) In developing its plan, the state board shall identify opportunities for emission reductions measures from all verifiable and enforceable voluntary actions, including, but not limited to, carbon sequestration projects and best management practices.

(g) The state board shall conduct a series of public workshops to give interested parties an opportunity to comment on the plan. The state board shall conduct a portion of these workshops in regions of the state that have the most significant exposure to air pollutants, including, but not limited to, communities with minority populations, communities with low-income populations, or both.

(h) The state board shall update its plan for achieving the maximum technologically feasible and cost-effective reductions of greenhouse gas emissions at least once every five years.

38562. (a) On or before January 1, 2011, the state board shall adopt greenhouse gas emission limits and emission reduction measures by regulation to achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions in furtherance of achieving the statewide greenhouse gas emissions limit, to become operative beginning on January 1, 2012.

(b) In adopting regulations pursuant to this section and Part 5 (commencing with Section 38570), to the extent feasible and in furtherance of achieving the statewide greenhouse gas emissions limit, the state board shall do all of the following:

(1) Design the regulations, including distribution of emissions allowances where appropriate, in a manner that is equitable, seeks to minimize costs and maximize the total benefits to California, and encourages early action to reduce greenhouse gas emissions.

(2) Ensure that activities undertaken to comply with the regulations do not disproportionately impact low-income communities.

(3) Ensure that entities that have voluntarily reduced their greenhouse gas emissions prior to the implementation of this section receive appropriate credit for early voluntary reductions.

(4) Ensure that activities undertaken pursuant to the regulations complement, and do not interfere with, efforts to achieve and maintain federal and state ambient air quality standards and to reduce toxic air contaminant emissions.

(5) Consider cost-effectiveness of these regulations.

(6) Consider overall societal benefits, including reductions in other air pollutants, diversification of energy sources, and other benefits to the economy, environment, and public health.

(7) Minimize the administrative burden of implementing and complying with these regulations.

(8) Minimize leakage.

(9) Consider the significance of the contribution of each source or category of sources to statewide emissions of greenhouse gases.

(c) In furtherance of achieving the statewide greenhouse gas emissions limit, by January 1, 2011, the state board may adopt a regulation that establishes a system of market-based declining annual aggregate emission limits for sources or categories of sources that emit greenhouse gas emissions, applicable from January 1, 2012, to December 31, 2020, inclusive, that the state board determines will achieve the maximum

technologically feasible and cost-effective reductions in greenhouse gas emissions, in the aggregate, from those sources or categories of sources.

(d) Any regulation adopted by the state board pursuant to this part or Part 5 (commencing with Section 38570) shall ensure all of the following:

(1) The greenhouse gas emission reductions achieved are real, permanent, quantifiable, verifiable, and enforceable by the state board.

(2) For regulations pursuant to Part 5 (commencing with Section 38570), the reduction is in addition to any greenhouse gas emission reduction otherwise required by law or regulation, and any other greenhouse gas emission reduction that otherwise would occur.

(3) If applicable, the greenhouse gas emission reduction occurs over the same time period and is equivalent in amount to any direct emission reduction required pursuant to this division.

(e) The state board shall rely upon the best available economic and scientific information and its assessment of existing and projected technological capabilities when adopting the regulations required by this section.

(f) The state board shall consult with the Public Utilities Commission in the development of the regulations as they affect electricity and natural gas providers in order to minimize duplicative or inconsistent regulatory requirements.

(g) After January 1, 2011, the state board may revise regulations adopted pursuant to this section and adopt additional regulations to further the provisions of this division.

38563. Nothing in this division restricts the state board from adopting greenhouse gas emission limits or emission reduction measures prior to January 1, 2011, imposing those limits or measures prior to January 1, 2012, or providing early reduction credit where appropriate.

38564. The state board shall consult with other states, and the federal government, and other nations to identify the most effective strategies and methods to reduce greenhouse gases, manage greenhouse gas control programs, and to facilitate the development of integrated and cost-effective regional, national, and international greenhouse gas reduction programs.

38565. The state board shall ensure that the greenhouse gas emission reduction rules, regulations, programs, mechanisms, and incentives under its jurisdiction, where applicable and to the extent feasible, direct public and private investment toward the most disadvantaged communities in California and provide an opportunity for small businesses, schools, affordable housing associations, and other community institutions to participate in and benefit from statewide efforts to reduce greenhouse gas emissions.

## PART 5. MARKET-BASED COMPLIANCE MECHANISMS

38570. (a) The state board may include in the regulations adopted pursuant to Section 38562 the use of market-based compliance mechanisms to comply with the regulations.

(b) Prior to the inclusion of any market-based compliance mechanism in the regulations, to the extent feasible and in furtherance of achieving the statewide greenhouse gas emissions limit, the state board shall do all of the following:

(1) Consider the potential for direct, indirect, and cumulative emission impacts from these mechanisms, including localized impacts in communities that are already adversely impacted by air pollution.

(2) Design any market-based compliance mechanism to prevent any increase in the emissions of toxic air contaminants or criteria air pollutants.

(3) Maximize additional environmental and economic benefits for California, as appropriate.

(c) The state board shall adopt regulations governing how market-based compliance mechanisms may be used by regulated entities subject to greenhouse gas emission limits and mandatory emission reporting requirements to achieve compliance with their greenhouse gas emissions limits.

38571. The state board shall adopt methodologies for the quantification of voluntary greenhouse gas emission reductions. The state board shall adopt regulations to verify and enforce any voluntary greenhouse gas emission reductions that are authorized by the state board for use to comply with greenhouse gas emission limits established by the state board. The adoption of methodologies is exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

38574. Nothing in this part or Part 4 (commencing with Section 38560) confers any authority on the state board to alter any programs administered by other state agencies for the reduction of greenhouse gas emissions.

## PART 6. ENFORCEMENT

38580. (a) The state board shall monitor compliance with and enforce any rule, regulation, order, emission limitation, emissions reduction measure, or market-based compliance mechanism adopted by the state board pursuant to this division.

(b) (1) Any violation of any rule, regulation, order, emission limitation, emissions reduction measure, or other measure adopted by the state board pursuant to this division may be enjoined pursuant to Section 41513, and the violation is subject to those penalties set forth in Article 3 (commencing with Section 42400) of Chapter 4 of Part 4 of, and Chapter 1.5 (commencing with Section 43025) of Part 5 of, Division 26.

(2) Any violation of any rule, regulation, order, emission limitation, emissions reduction measure, or other measure adopted by the state board pursuant to this division shall be deemed to result in an emission of an air contaminant for the purposes of the penalty provisions of Article 3 (commencing with Section 42400) of Chapter 4 of Part 4 of, and Chapter 1.5 (commencing with Section 43025) of Part 5 of, Division 26.

(3) The state board may develop a method to convert a violation of any rule, regulation, order, emission limitation, or other emissions reduction measure adopted by the state board pursuant to this division into the number of days in violation, where appropriate, for the purposes of the penalty provisions of Article 3 (commencing with Section 42400) of Chapter 4 of Part 4 of, and Chapter 1.5 (commencing with Section 43025) of Part 5 of, Division 26.

(c) Section 42407 and subdivision (i) of Section 42410 shall not apply to this part.

#### PART 7. MISCELLANEOUS PROVISIONS

38590. If the regulations adopted pursuant to Section 43018.5 do not remain in effect, the state board shall implement alternative regulations to control mobile sources of greenhouse gas emissions to achieve equivalent or greater reductions.

38591. (a) The state board, by July 1, 2007, shall convene an environmental justice advisory committee, of at least three members, to advise it in developing the scoping plan pursuant to Section 38561 and any other pertinent matter in implementing this division. The advisory committee shall be comprised of representatives from communities in the state with the most significant exposure to air pollution, including, but not limited to, communities with minority populations or low-income populations, or both.

(b) The state board shall appoint the advisory committee members from nominations received from environmental justice organizations and community groups.

(c) The state board shall provide reasonable per diem for attendance at advisory committee meetings by advisory committee members from nonprofit organizations.

(d) The state board shall appoint an Economic and Technology Advancement Advisory Committee to advise the state board on activities that will facilitate investment in and implementation of technological research and development opportunities, including, but not limited to, identifying new technologies, research, demonstration projects, funding opportunities, developing state, national, and international partnerships and technology transfer opportunities, and identifying and assessing research and advanced technology investment and incentive opportunities that will assist in the reduction of greenhouse gas emissions. The committee may also advise the state board on state, regional, national, and

international economic and technological developments related to greenhouse gas emission reductions.

38592. (a) All state agencies shall consider and implement strategies to reduce their greenhouse gas emissions.

(b) Nothing in this division shall relieve any person, entity, or public agency of compliance with other applicable federal, state, or local laws or regulations, including state air and water quality requirements, and other requirements for protecting public health or the environment.

38593. (a) Nothing in this division affects the authority of the Public Utilities Commission.

(b) Nothing in this division affects the obligation of an electrical corporation to provide customers with safe and reliable electric service.

38594. Nothing in this division shall limit or expand the existing authority of any district, as defined in Section 39025.

38595. Nothing in this division shall preclude, prohibit, or restrict the construction of any new facility or the expansion of an existing facility subject to regulation under this division, if all applicable requirements are met and the facility is in compliance with regulations adopted pursuant to this division.

38596. The provisions of this division are severable. If any provision of this division or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

38597. The state board may adopt by regulation, after a public workshop, a schedule of fees to be paid by the sources of greenhouse gas emissions regulated pursuant to this division, consistent with Section 57001. The revenues collected pursuant to this section, shall be deposited into the Air Pollution Control Fund and are available upon appropriation, by the Legislature, for purposes of carrying out this division.

38598. (a) Nothing in this division shall limit the existing authority of a state entity to adopt and implement greenhouse gas emissions reduction measures.

(b) Nothing in this division shall relieve any state entity of its legal obligations to comply with existing law or regulation.

38599. (a) In the event of extraordinary circumstances, catastrophic events, or threat of significant economic harm, the Governor may adjust the applicable deadlines for individual regulations, or for the state in the aggregate, to the earliest feasible date after that deadline.

(b) The adjustment period may not exceed one year unless the Governor makes an additional adjustment pursuant to subdivision (a).

(c) Nothing in this section affects the powers and duties established in the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code).

(d) The Governor shall, within 10 days of invoking subdivision (a), provide written notification to the Legislature of the action undertaken.

SEC. 2 No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that

## Assembly Bill No. 1969

### CHAPTER 731

An act to add Section 399.20 to the Public Utilities Code, relating to energy.

[Approved by Governor September 29, 2006. Filed with Secretary of State September 29, 2006.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1969, Yee. Electrical corporations: water agencies.

(1) The Public Utilities Act requires the Public Utilities 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).

Existing law, except as specified, requires every electric service provider, as defined, to develop a standard contract or tariff providing for net energy metering, and to make this contract or tariff available to eligible customer generators, upon request, on a first-come-first-served basis until the total rated generating capacity used by eligible customer generators exceeds 0.5% of the electric service provider's aggregate customer peak demand.

This bill would require every electrical corporation to file with the commission a standard tariff for renewable energy output produced at an electric generation facility, as defined, that, among other things, is an eligible renewable energy resource. The bill would require the electrical corporation to make this tariff available to public water or wastewater agencies 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 250 megawatts. The bill would specify that each electrical corporation would only be required to offer service or contracts under the bill until that electrical corporation meets its proportionate share of the 250 megawatts based on the ratio of its peak demand to the total statewide peak demand of all electrical corporations.

The bill would provide that, upon approval by the commission, any tariff or contract authorized by the bill may be made available to an electric generation facility that has an effective capacity of not more than 1.5 megawatts if that electrical generation facility otherwise complies with the bill.

(2) Under existing law, the failure to file a required tariff, or a violation of an order or direction of the commission, including a commission-approved tariff, is a crime.

Because the bill would require electrical corporations to file new tariffs, the bill would impose a state-mandated local program by creating new crimes.

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

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

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The health of the state's economy depends upon reliable, affordable, adequate, and environmentally sound supplies of energy and water.

(b) The state's rapidly growing population is increasing the demand for water and the energy needed to deliver and treat it.

(c) The state's water-related electricity demand accounts for nearly 20 percent of the state's overall electricity consumption.

(d) Despite improvements in power plant licensing, successful energy efficiency programs, and continued technological advancements, the development of new energy supplies is not keeping pace with the state's increasing demand. Moreover, the development of new renewable resources has been slower than anticipated and limited by existing transmission constraints.

(e) Unless properly managed on a statewide basis, water-related electricity demand could ultimately affect the reliability of the electric system.

(f) Public water and wastewater facilities are strategically located and interconnected to the electric transmission system in a manner that optimizes the deliverability of electricity generated at those facilities to load centers.

(g) Renewable energy produced at public water and wastewater facilities will reduce the demand for the production of nonrenewable energy needed to serve water-related electricity demand.

SEC. 2. Section 399.20 is added to the Public Utilities Code, to read:

399.20. (a) It is the policy of this state and the intent of the Legislature to encourage energy production from renewable resources at public water

and wastewater facilities in an amount commensurate with water-related electricity demand.

(b) As used in this section, “electric generation facility” means an electric generation facility, owned and operated by a public water or wastewater agency that is a retail customer of an electrical corporation, and that meets all of the following criteria:

(1) Has an effective capacity of not more than one megawatt and is located on or adjacent to a water or wastewater facility owned and operated by the public water or wastewater agency.

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

(3) Is sized to offset part or all of the electricity demand of the public water or wastewater agency.

(4) 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.

(5) Is an eligible renewable energy resource, as defined in Section 399.12.

(c) Every electrical corporation shall file with the commission a standard tariff for renewable energy output produced at an electric generation facility.

(d) The tariff shall provide for payment for every kilowatthour of renewable energy output produced at an electric generation facility at the market price as determined by the commission pursuant to Section 399.15 for a period of 10, 15, or 20 years, as authorized by the commission.

(e) Every electrical corporation shall make this tariff available to public water or wastewater agencies 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 250 megawatts. An electrical corporation may make the terms of the tariff available to public water or wastewater agencies 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 250 megawatts based on the ratio of its peak demand to the total statewide peak demand of all electrical corporations.

(f) Every kilowatthour of renewable energy output produced by the electric generation facility shall count toward the electrical corporation’s renewable portfolio standard annual procurement targets for purposes of paragraph (1) of subdivision (b) of Section 399.15.

(g) The physical generating capacity of an electric generation facility shall count toward the electrical corporation’s resource adequacy requirement for purposes of Section 380.

(h) Upon approval by the commission, any tariff or contract authorized by this section may be made available to an electric generation facility that has an effective capacity of not more than 1.5 megawatts if that electrical

generation facility otherwise complies with all of the provisions of this section.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only 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.

## Senate Bill No. 107

### CHAPTER 464

An act to amend Sections 25620.1, 25740, 25741, 25742, 25743, 25746, and 25751 of, to add Sections 25470.5 and 25744.5 to, and to repeal Sections 25745 and 25749 of, the Public Resources Code, and to amend Sections 387, 399.11, 399.12, 399.13, 399.14, and 399.15 of, to add Article 9 (commencing with Section 635) to Chapter 3 of Part 1 of Division 1 of, to add and repeal Section 2854 of, and to repeal and add Section 399.16 of, the Public Utilities Code, relating to energy.

[Approved by Governor September 26, 2006. Filed with  
Secretary of State September 26, 2006.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 107, Simitian. Renewable energy: Public Interest Energy Research, Demonstration, and Development Program.

(1) Existing law expresses the intent of the Legislature, in establishing the Renewable Energy Resources Program, to increase the amount of renewable electricity generated per year, so that it equals at least 17% of the total electricity generated for consumption in California per year by 2006.

This bill would revise and recast that intent language so that the amount of electricity generated per year from eligible renewable energy resources is increased to an amount that equals at least 20% of the total electricity sold to retail customers in California per year by December 31, 2010. The bill would make conforming changes related to this provision.

(2) The Public Utilities Act imposes various duties and responsibilities on the California Public Utilities Commission (CPUC) with respect to the purchase of electricity and requires the CPUC 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 electrical corporation 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, 2017.

This bill would instead require that each retail seller, as defined, 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.

(3) Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to certify eligible renewable energy resources, to design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, and to allocate and award supplemental energy payments to cover above-market costs of renewable energy.

This bill would require the Energy Commission, if it provides funding for a regional accounting system to verify compliance with the renewables portfolio standard by retail sellers, to recover all costs from user fees. The bill would require the Energy Commission to develop tracking, accounting, verification, and enforcement mechanisms for renewable energy credits, as defined. The bill would specify that facilities located out of state shall not be eligible for supplemental energy payments unless certain requirements are met, and would limit awards to those facilities to 10% of funds available. The bill would require that deliveries of electricity from an eligible renewable energy resource under any electricity purchase agreement with a retail seller executed before January 1, 2002, be tracked and included in the baseline quantity of eligible renewable energy resources of the purchasing retail seller. The bill would require that electricity generated pursuant to a prescribed federal act and pursuant to a purchase contract executed on or after January 1, 2002, count towards the renewables portfolio standard requirements of the retail seller. The bill would provide for the tracking of deliveries under these purchase contracts through a prescribed accounting system. The bill would make other technical and conforming changes.

Existing law provides that if supplemental energy payments from the Energy Commission, in combination with the market prices approved by the CPUC, are insufficient to cover any above-market costs of eligible renewable energy resources, the CPUC is required to allow a retail seller to limit its annual procurement obligation to the quantity of eligible renewable energy resources that can be procured with available supplemental energy payments.

This bill would require the CPUC to adopt flexible rules allowing a retail seller to limit its annual procurement obligation to the quantity of eligible renewable energy resources that can be delivered by existing transmission if the CPUC finds that the retail seller has undertaken all reasonable efforts to utilize flexible delivery points, ensure the availability of any needed transmission capacity, and, if an electric corporation, to construct needed transmission facilities.

(4) The Public Utilities Act permits the Energy Commission to consider an electric generating facility that is located outside the state to be an eligible renewable energy resource if it meets specific criteria.

This bill would delete that provision within the act and would amend the definition of an “in-state renewable electricity generation facility” within related provisions prescribing duties of the Energy Commission to encompass certain facilities located outside the state.

(5) Under existing law, the governing board of a local publicly owned electric utility is responsible for implementing and enforcing a renewables portfolio standard that recognizes the intent of the Legislature to encourage renewable energy resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement. Existing law requires the governing board of a local publicly owned electric utility to annually report certain information relative to renewable energy resources to its customers.

This bill would additionally require that the governing board of a local publicly owned electric utility annually report the utility’s status in implementing a renewables portfolio standard and progress toward attaining the standard to its customers and to report to the Energy Commission the information that the governing board is required to annually report to their customers. These additional reporting requirements would thereby impose a state-mandated local program.

(6) Under the Public Utilities Act, the CPUC requires electrical corporations to identify a separate rate component to fund programs that enhance system reliability and provide in-state benefits. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. The funds are collected to support cost-effective energy efficiency and conservation activities, public interest research and development not adequately provided by competitive and regulated markets, and renewable energy resources (renewable energy public goods charge). Existing law requires the Energy Commission to transfer funds collected from the renewable energy public goods charge into the Renewable Resource Trust Fund and establishes certain accounts in the fund to carry out certain renewable energy purposes.

This bill would require the Energy Commission, in carrying out the renewable energy resources program, to optimize public investment and ensure that the most cost-effective and efficient investments in renewable energy resources are vigorously pursued with a long-term goal of achieving a fully competitive and self-sustaining supply of electricity generated from renewable sources. The bill would state that a near term objective of the program is to increase the quantity of electricity generated by in-state renewable electricity generation facilities, while protecting system reliability, fostering resource diversity, and obtaining the greatest environmental benefits for California residents with an additional objective to identify and support emerging renewable energy technologies that have the greatest near-term commercial promise and that merit targeted assistance. The bill would make legislative recommendations for allocations among specified renewable energy resources.

(7) Under existing law, 51.5% of the money collected as part of the renewable energy public goods charge is required to be used for programs

designed to foster the development of new in-state renewable electricity generation facilities, and to secure for the state the environmental, economic, and reliability benefits that operation of those facilities will provide. Existing law also provides that any of those funds used for new in-state renewable electricity generation facilities are required to be expended in accordance with a specified report of the Energy Commission to the Legislature, subject to certain requirements, including the awarding of supplemental energy payments.

This bill would require that these funds be awarded only to a project that is selected by an electrical corporation pursuant to a competitive solicitation procedure found by the CPUC to comply with the California Renewables Portfolio Standard Program and that the project participant has entered into an electricity purchase agreement resulting from that solicitation that is approved by the CPUC. The bill would authorize certain projects supplying electricity to retail sellers, as defined, to the extent the retail seller is servicing load that is within the distribution area of an electrical corporation and subject to the renewable energy public goods charge, to receive supplemental energy payments under certain circumstances. The bill would prohibit the Energy Commission from awarding supplemental energy payments for the sale or purchase of renewable energy credits or to service load that is not subject to the renewable energy public goods charge. The bill would incorporate the modified definition of an “in-state renewable electricity generation facility.”

(8) Existing law requires that 20% of the funds collected as part of the renewable energy public goods charge be used for a program designed to improve the competitiveness of existing in-state renewable electricity generation facilities and to secure for the state specified benefits.

This bill would reduce that amount to 10% of the funds collected and specify conditions under which certain facilities would be eligible for funding.

(9) Existing law requires that 17½% of the funds collected as part of the renewable energy public goods charge be deposited into the Emerging Renewables Resources Account, and be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications.

Existing law requires the Energy Commission, by January 1, 2008, and in consultation with the CPUC, local publicly owned electric utilities, and interested members of the public, to establish and thereafter revise eligibility criteria for solar energy systems, as defined, and to establish conditions for ratepayer funded incentives that are applicable to the California Solar Initiative, as defined.

This bill would require that the Energy Commission, in allocating and using moneys in the Emerging Renewables Resources Account and the Renewable Resource Trust Fund to fund photovoltaic and solar thermal electric technologies, to utilize the eligibility criteria and conditions for solar energy systems that are applicable to the California Solar Initiative.

(10) Existing law establishes the Customer-Credit Renewable Resource Purchases Account in the Renewable Resource Trust Fund, requires that 10% of the money collected under the renewable energy public goods charge be deposited into the account and be used for credits to customers that entered into a direct transaction on or before September 20, 2001, for purchases of electricity produced by registered in-state renewable electricity generating facilities.

This bill would delete these provisions.

(11) Existing law requires the use of standard terms and conditions by all electrical corporations in contracting for eligible renewable energy resources.

This bill would require that those terms and conditions include the requirement that, no later than 6 months after the CPUC's approval of an electricity purchase agreement, the following information about the agreement be disclosed by the CPUC: party names, resource type, project location, and project capacity.

(12) This bill would require an electrical corporation or local publicly owned electric utility to adopt certain strategies in a long-term plan or a procurement plan, as applicable, to achieve efficiency in the use of fossil fuels and to address carbon emissions, as specified.

(13) This bill would delete certain obsolete and duplicative provisions and make technical and conforming changes.

(14) This bill would require the CPUC, in consultation with the Energy Commission, to review the impact of allowing supplemental energy payments to be applied toward contracts for the procurement of eligible renewable energy resources that are of a duration of less than 10 years, and, by June 30, 2007, to report to the Legislature with the results of the review, including certain matters. The bill would require the PUC to report to the Legislature, on or before January 1, 2008, on the feasibility, desirability, and design of performance-based incentives for solar energy systems of less than 30 kilowatts.

(15) Existing law establishes the Public Interest Research, Development, and Demonstration Fund in the State Treasury, and provides that the money collected by the public goods charge to support public interest research and development not adequately provided by competitive and regulated markets, be deposited in the fund for use by the Energy Commission to develop, implement, and administer the Public Interest Research, Development, and Demonstration Program to develop technologies which will improve environmental quality, enhance electrical system reliability, increase efficiency of energy-using technologies, lower electrical system costs, or provide other tangible benefits. The Energy Commission is required to adopt a portfolio approach for the program that accomplishes specified objectives.

This bill would state that the general goal of the program is to develop, and help bring to market, energy technologies that provide increased environmental benefits, greater system reliability, and lower system costs, and that provide tangible benefits to electrical utility customers through

specified investments. The bill would require that the portfolio approach used by the Energy Commission additionally ensure an open project selection process, encourage the awarding of research funding for a diverse type of research as well as a diverse award recipient base, equally considers research proposals from the public and private sectors, and be coordinated with other related research programs.

(16) Existing law makes a violation of the Public Utilities Act or a violation of an order of the CPUC a crime.

Certain of the provisions of this bill are a part of the act and an order of the CPUC would be required to implement these provisions. Because a violation of the provisions of the bill that are part of the act or of any CPUC order implementing these provisions would be a crime, this bill would impose a state-mandated local program by creating new crimes.

(17) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

SECTION 1. Section 25620.1 of the Public Resources Code is amended to read:

25620.1. (a) The commission shall develop, implement, and administer the Public Interest Research, Development, and Demonstration Program that is hereby created. The program shall include a full range of research, development, and demonstration activities that, as determined by the commission, are not adequately provided for by competitive and regulated markets. The commission shall administer the program consistent with the policies of this chapter.

(b) The general goal of the program is to develop, and help bring to market, energy technologies that provide increased environmental benefits, greater system reliability, and lower system costs, and that provide tangible benefits to electrical utility customers through investments in the following:

(1) Advanced electricity and natural gas transportation technologies that reduce air pollution and emissions of greenhouse gases beyond applicable standards, and that benefit electricity and natural gas ratepayers.

(2) Increased energy efficiency in buildings, appliances, lighting, and other applications beyond applicable standards, and that benefit electrical utility customers.

(3) Advanced electricity generation technologies that exceed applicable standards to increase reductions in emissions of greenhouse gases from electricity generation, and that benefit electric utility customers.

(4) Advanced electricity technologies that reduce or eliminate consumption of water or other finite resources, increase use of renewable energy resources, or improve transmission or distribution of electricity generated from renewable energy resources.

(c) To achieve the goals established in subdivision (b), the commission shall adopt a portfolio approach for the program that does all of the following:

(1) Effectively balances the risks, benefits, and time horizons for various activities and investments that will provide tangible energy or environmental benefits for California electricity customers.

(2) Emphasizes innovative energy supply and end-use technologies, focusing on their reliability, affordability, and environmental attributes.

(3) Includes projects that have the potential to enhance transmission and distribution capabilities.

(4) Includes projects that have the potential to enhance the reliability, peaking power, and storage capabilities of renewable energy.

(5) Demonstrates a balance of benefits to all sectors that contribute to the funding under Section 399.8 of the Public Utilities Code.

(6) Addresses key technical and scientific barriers.

(7) Demonstrates a balance between short-term, mid-term, and long-term potential.

(8) Ensures that prior, current, and future research not be unnecessarily duplicated.

(9) Provides for the future market utilization of projects funded through the program.

(10) Ensures an open project selection process and encourages the awarding of research funding for a diverse type of research as well as a diverse award recipient base and equally considers research proposals from the public and private sectors.

(11) Coordinates with other related research programs.

(d) The term “award,” as used in this chapter, may include, but is not limited to, contracts, grants, interagency agreements, loans, and other financial agreements designed to fund public interest research, demonstration, and development projects or programs.

SEC. 2. Section 25740 of the Public Resources Code is amended to read:

25740. It is the intent of the Legislature in establishing this program, to increase the amount of electricity generated from eligible renewable energy resources per year, so that it equals at least 20 percent of total retail sales of electricity in California per year by December 31, 2010.

SEC. 3. Section 25741 of the Public Resources Code is amended to read:

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

(a) “Delivered” and “delivery” mean the electricity output of an in-state renewable electricity generation facility that is used to serve end-use retail customers located within the state. Subject to verification by the accounting system established by the commission pursuant to subdivision (b) of Section 399.13 of the Public Utilities Code, electricity shall be deemed delivered if it is either generated at a location within the state, or is scheduled for consumption by California end-use retail customers. Subject to criteria adopted by the commission, electricity generated by an eligible renewable energy resource may be considered “delivered” regardless of whether the electricity is generated at a different time from consumption by a California end-use customer.

(b) “In-state renewable electricity generation facility” means a facility that meets all of the following criteria:

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

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

(A) The facility is located in the state or near the border of the state with the first point of connection to the transmission network 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:

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

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

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

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

(v) 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.

(vi) 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 (b) of Section 399.13 of the Public Utilities Code.

(C) The facility meets the requirements of clauses (i), (iii), (iv), (v), and (vi) in subparagraph (B), but does not meet the requirements of clause (ii) because it commences initial operation prior to January 1, 2005, if the facility satisfies either of the following requirements:

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

(ii) The facility has been part of the existing baseline of eligible renewable energy resources of a retail seller established pursuant to

paragraph (2) of subdivision (b) of Section 399.15 of the Public Utilities Code.

(3) For the purposes of this subdivision, “solid waste conversion” means a technology that uses a noncombustion thermal process to convert solid waste to a clean-burning fuel for the purpose of generating electricity, and that meets all of the following criteria:

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

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

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

(D) The technology produces no hazardous wastes.

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

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

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

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

(c) “Procurement entity” means any person or corporation that enters into an agreement with a retail seller to procure eligible renewable energy resources pursuant to subdivision (f) of Section 399.14 of the Public Utilities Code.

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

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

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

SEC. 4. Section 25740.5 is added to the Public Resources Code, to read:

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

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

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

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

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

(1) (A) Except as provided in subparagraph (B), production incentives for new in-state renewable electricity generation facilities, including repowered or refurbished facilities.

(B) Allocations shall not be made for electricity that is generated by an in-state renewable electricity generation facility that remains under an electricity purchase contract with an electrical corporation originally entered into prior to September 24, 1996, whether amended or restated thereafter.

(C) Notwithstanding subparagraph (B), production incentives may be allowed in any month for incremental new electricity generated by an in-state renewable electricity generation facility that is repowered or refurbished, where the electricity is delivered under an electricity purchase contract with an electrical corporation originally entered into prior to September 24, 1996, whether amended or restated thereafter, if all of the following occur:

(i) The facility's electricity purchase contract provides that all electricity delivered and sold under the contract is paid at a price that does not exceed the Public Utilities Commission approved short-run avoided cost of energy.

(ii) Either of the following is true:

(I) The electricity purchase contract is amended to provide that the kilowatthours used to determine the capacity payment in any time-of-delivery period in any month under the contract shall be equal to the actual kilowatthour production, but no greater than the five-year average of the kilowatthours delivered for the corresponding time-of-delivery period and month, in the years 1994 to 1998, inclusive.

(II) The facility's installed capacity as of December 31, 1998, is less than 75 percent of the nameplate capacity as stated in the electricity purchase contract, the electricity purchase contract is amended to provide that the kilowatthours used to determine the capacity payment in any time-of-delivery period in any month under the contract shall be equal to the actual kilowatthour production, but no greater than the product of the

five-year average of the kilowatthours delivered for the corresponding time-of-delivery period and month, in the years 1994 to 1998, inclusive, and the ratio of installed capacity as of December 31 of the previous year, but not to exceed contract nameplate capacity, to the installed capacity as of December 31, 1998.

(iii) The production incentive is payable only with respect to the kilowatthours delivered in a particular month that exceeds the corresponding five-year average calculated pursuant to clause (ii).

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

(3) Customer education.

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

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

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

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

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

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

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

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

SEC. 5. Section 25742 of the Public Resources Code is amended to read:

25742. (a) Ten percent of the funds collected pursuant to the renewable energy public goods charge shall be used for programs that are designed to achieve fully competitive and self-sustaining existing in-state renewable electricity generation facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide during the 2007–2011 investment cycle. Eligibility for incentives under this section shall be limited to those technologies found eligible for funds by the commission pursuant to paragraphs (4), (5), and (7) of subdivision (e) of Section 25740.5.

(b) Any funds used to support in-state renewable electricity generation facilities pursuant to this section shall be expended in accordance with the provisions of this chapter, including the following conditions:

(1) The commission shall establish a production incentive, which shall not exceed payment caps established by the commission, representing the difference between target prices and the price paid for electricity, if sufficient funds are available. If there are insufficient funds in any payment period to pay either the difference between the target and price paid for electricity or the payment caps, production incentives shall be based on the amount determined by dividing available funds by eligible generation.

(2) The commission may establish a time-differentiated incentive structure that encourages plants to run the maximum feasible amount of time and that provides a higher incentive when the plants are receiving the lowest price.

(3) The commission may consider inflation and production costs.

(c) Facilities that are eligible to receive funding pursuant to this section shall be registered in accordance with criteria developed by the commission and those facilities shall not receive payments for any electricity produced that is used on site.

(d) (1) The commission shall award funding to eligible facilities based on a facility's individual need. In assessing a facility's individual need, the commission shall, to the extent feasible, consider all of the following:

(A) The amount of the funds being considered for an award to the facility.

(B) The cumulative amount of funds the facility has received previously from the commission and other state sources.

(C) The value of any current federal or state tax credits.

(D) The facility's contract price for energy and capacity.

(E) The likelihood that the award will make the facility competitive and self-sustaining within the 2007–2011 investment cycle.

(F) Any other criteria as determined by the commission.

(2) The assessment shall also consider the public benefits provided by the operation of the facility.

(3) The commission shall use its assessment of the facility's individual need to determine the value of an award to the public relative to other renewable energy investment alternatives.

(4) The commission shall compile its findings and report them to the Legislature in the reports prepared pursuant to Section 25748.

SEC. 6. Section 25743 of the Public Resources Code is amended to read:

25743. (a) Fifty-one and one-half percent of the money collected pursuant to the renewable energy public goods charge shall be used for programs designed to foster the development of new in-state renewable electricity generation facilities, and to secure for the state the environmental, economic, and reliability benefits that operation of those facilities will provide.

(b) Any funds used for new in-state renewable electricity generation facilities pursuant to this section shall be expended in accordance with the report, subject to all of the following requirements:

(1) In order to cover the above market costs of eligible renewable energy resources as approved by the Public Utilities Commission and selected by retail sellers to fulfill their obligations under Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, the commission shall award funds in the form of supplemental energy payments, subject to the following criteria:

(A) The commission may establish caps on supplemental energy payments. The caps shall be designed to provide for a viable energy market capable of achieving the goals of Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code. The commission may waive application of the caps to accommodate a facility if it is demonstrated to the satisfaction of the commission that operation of the facility would provide substantial economic and environmental benefits to end-use customers subject to the renewable energy public goods charge.

(B) Supplemental energy payments shall be awarded only to facilities that are eligible for funding under this section.

(C) Supplemental energy payments awarded to facilities selected by a retail seller or procurement entity pursuant to Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code shall be paid for no longer than 10 years, but shall, subject to the payment caps in subparagraph (A), be equal to the cumulative above-market costs relative to the applicable market price referent at the time of initial contracting, over the duration of the contract with the retail seller or procurement entity.

(D) The commission shall reduce or terminate supplemental energy payments for projects that fail either to commence and maintain operations consistent with the contractual obligations to an electrical corporation, or that fail to meet eligibility requirements.

(E) Funds shall be managed in an equitable manner in order for retail sellers to meet their obligation under Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code.

(F) A project selected by an electrical corporation may receive supplemental energy payments only if it results from a competitive

solicitation that is found by the Public Utilities Commission to comply with the California Renewables Portfolio Standard Program under Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, and the project has entered into an electricity purchase agreement resulting from that solicitation, that is approved by the Public Utilities Commission. A project selected for an electricity purchase agreement by another retail seller or procurement entity may receive supplemental energy payments only if the Public Utilities Commission determines that the selection of the project is consistent with the results of a least-cost and best-fit process, and the supplemental energy payments are reasonable in comparison to those paid under similar contracts with other retail sellers. The commission may not award supplemental energy payments to service load that is not subject to the renewable energy public goods charge.

(G) (i) Supplemental energy payments shall not be awarded for any purchases of renewable energy credits.

(ii) Supplemental energy payments shall not be awarded for electricity purchase agreements that have a duration of less than 10 years. The ineligibility of agreements of less than 10 years duration for supplemental energy payments does not constitute an insufficiency in supplemental energy payments pursuant to paragraph (4) or (5) of subdivision (b) of Section 399.15.

(2) (A) A facility that is located outside of California shall not be eligible for funding under this section unless it satisfies the requirements of this subdivision and the criteria of subparagraph (B) of paragraph (2) of subdivision (b) of Section 25741.

(B) No more than 10 percent of the funds available under this section shall be awarded to facilities located outside of California.

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

(A) Is sold under an existing long-term contract with an existing in-state electrical corporation if the contract includes fixed energy or capacity payments, except for that electricity that satisfies subparagraph (C) of paragraph (1) of subdivision (c) of Section 399.6 of the Public Utilities Code.

(B) Is used onsite or is sold to customers in a manner that excludes competition transition charge payments, or is otherwise excluded from competition transition charge payments.

(C) Is a hydroelectric generation project that will require a new or increased appropriation of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code, or any other provision authorizing an appropriation of water.

(D) Is a solid waste conversion facility, unless the facility meets the criteria established in paragraph (3) of subdivision (b) of Section 25741 and the facility certifies that any local agency sending solid waste to the

facility is in compliance with Division 30 (commencing with Section 40000), has reduced, recycled, or composted solid waste to the maximum extent feasible, and shall have been found by the California Integrated Waste Management Board to have diverted at least 30 percent of all solid waste through source reduction, recycling, and composting.

(4) Eligibility to compete for funds or to receive funds shall be contingent upon having to sell the electricity generated by the renewable electricity generation facility to customers subject to the renewable energy public goods charge.

(5) The commission may require applicants competing for funding to post a forfeitable bid bond or other financial guaranty as an assurance of the applicant's intent to move forward expeditiously with the project proposed. The amount of any bid bond or financial guaranty may not exceed 10 percent of the total amount of the funding requested by the applicant.

(6) In awarding funding, the commission may provide preference to projects that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(c) Repowered existing facilities shall be eligible for funding under this subdivision if the capital investment to repower the existing facility equals at least 80 percent of the value of the repowered facility.

(d) Facilities engaging in the direct combustion of municipal solid waste or tires are not eligible for funding under this subdivision.

(e) Production incentives awarded under this subdivision prior to January 1, 2002, shall commence on the date that a project begins electricity production, provided that the project was operational prior to January 1, 2002, unless the commission finds that the project will not be operational prior to January 1, 2002, due to circumstances beyond the control of the developer. Upon making a finding that the project will not be operational due to circumstances beyond the control of the developer, the commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond January 1, 2007.

(f) Facilities generating electricity from biomass energy shall be considered an in-state renewable electricity generation facility to the extent that they report to the commission the types and quantities of biomass fuels used and certify to the satisfaction of the commission that fuel utilization is limited to the following:

(1) Agricultural crops and agricultural wastes and residues.

(2) Solid waste materials such as waste pallets, crates, dunnage, manufacturing, and construction wood wastes, landscape or right-of-way tree trimmings, mill residues that are directly the result of the milling of lumber, and rangeland maintenance residues.

(3) Wood and wood wastes that meet all of the following requirements:

(A) Have been harvested pursuant to an approved timber harvest plan prepared in accordance with the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Part 2 of Division 4).

(B) Have been harvested for the purpose of forest fire fuel reduction or forest stand improvement.

(C) Do not transport or cause the transportation of species known to harbor insect or disease nests outside zones of infestation or current quarantine zones, as identified by the Department of Food and Agriculture or the Department of Forestry and Fire Protection, unless approved by the Department of Food and Agriculture and the Department of Forestry and Fire Protection.

SEC. 7. Section 25744.5 is added to the Public Resources Code, to read:

25744.5. The commission shall allocate and use funding available for emerging renewable technologies pursuant to Section 25744 and Section 25751 to fund photovoltaic and solar thermal electric technologies in accordance with eligibility criteria and conditions established pursuant to Chapter 8.8 (commencing with Section 25780).

SEC. 8. Section 25745 of the Public Resources Code is repealed.

SEC. 9. Section 25746 of the Public Resources Code is amended to read:

25746. (a) One percent of the money collected pursuant to the renewable energy public goods charge shall be used in accordance with this chapter to promote renewable energy and disseminate information on renewable energy technologies, including emerging renewable technologies, and to help develop a consumer market for renewable energy and for small-scale emerging renewable energy technologies.

(b) If the commission provides funding for a regional accounting system to verify compliance with the renewable portfolio standard by retail sellers, pursuant to subdivision (b) of Section 399.13 of the Public Utilities Code, the commission shall recover all costs from user fees.

SEC. 10. Section 25749 of the Public Resources Code is repealed.

SEC. 11. Section 25751 of the Public Resources Code is amended to read:

25751. (a) The Renewable Resource Trust Fund is hereby created in the State Treasury.

(b) The following accounts are hereby established within the Renewable Resource Trust Fund:

- (1) The Existing Renewable Resources Account.
- (2) New Renewable Resources Account.
- (3) Emerging Renewable Resources Account.
- (4) Renewable Resources Consumer Education Account.

(c) The money in the fund may be expended, only upon appropriation by the Legislature in the annual Budget Act, for the following purposes:

- (1) The administration of this article by the state.
- (2) The state's expenditures associated with the accounting system established by the commission pursuant to subdivision (b) of Section 399.13 of the Public Utilities Code.

(d) That portion of revenues collected by electrical corporations for the benefit of in-state operation and development of existing and new and

emerging renewable resource technologies, pursuant to Section 25740.5, shall be transmitted to the commission at least quarterly for deposit in the Renewable Resource Trust Fund pursuant to Section 399.6 of the Public Utilities Code. After setting aside in the fund money that may be needed for expenditures authorized by the annual Budget Act in accordance with subdivision (c), the Treasurer shall immediately deposit money received pursuant to this section into the accounts created pursuant to subdivision (b) in proportions designated by the commission for the current calendar year. Notwithstanding Section 13340 of the Government Code, the money in the fund and the accounts within the fund are hereby continuously appropriated to the commission without regard to fiscal year for the purposes enumerated in this chapter.

(e) Upon notification by the commission, the Controller shall pay all awards of the money in the accounts created pursuant to subdivision (b) for purposes enumerated in this chapter. The eligibility of each award shall be determined solely by the commission based on the procedures it adopts under this chapter. Based on the eligibility of each award, the commission shall also establish the need for a multiyear commitment to any particular award and so advise the Department of Finance. Eligible awards submitted by the commission to the Controller shall be accompanied by information specifying the account from which payment should be made and the amount of each payment; a summary description of how payment of the award furthers the purposes enumerated in this chapter; and an accounting of future costs associated with any award or group of awards known to the commission to represent a portion of a multiyear funding commitment.

(f) The commission may transfer funds between accounts for cashflow purposes, provided that the balance due each account is restored and the transfer does not adversely affect any of the accounts.

(g) The Department of Finance shall conduct an independent audit of the Renewable Resource Trust Fund and its related accounts annually, and provide an audit report to the Legislature not later than March 1 of each year for which this article is operative. The Department of Finance's report shall include information regarding revenues, payment of awards, reserves held for future commitments, unencumbered cash balances, and other matters that the Director of Finance determines may be of importance to the Legislature.

SEC. 12. Section 387 of the Public Utilities Code is amended to read:

387. (a) Each governing body of a local publicly owned electric utility, as defined in Section 9604, shall be responsible for implementing and enforcing a renewables portfolio standard that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement.

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

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

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

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

SEC. 13. Section 399.11 of the Public Utilities Code is amended to read:

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

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

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

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

(d) The California Renewables Portfolio Standard Program is intended to complement the Renewable Energy Resources Program administered by the State Energy Resources Conservation and Development Commission and established pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code.

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

SEC. 14. Section 399.12 of the Public Utilities Code is amended to read:

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

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

(b) “Eligible renewable energy resource” means an electric generating facility that meets the definition of “in-state renewable electricity generation facility” in Section 25741 of the Public Resources Code, subject to the following limitations:

(1) (A) An existing small hydroelectric generation facility of 30 megawatts or less shall be eligible only if a retail seller owned or procured the electricity from the facility as of December 31, 2005. A new hydroelectric facility is not an eligible renewable energy resource if it will require a new or increased appropriation or diversion of water from a watercourse.

(B) Notwithstanding subparagraph (A), an existing conduit hydroelectric facility, as defined by Section 823a of Title 16 of the United States Code, of 30 megawatts or less, shall be an eligible renewable energy resource. A new conduit hydroelectric facility, as defined by Section 823a of Title 16 of the United States Code, of 30 megawatts or less, shall be an eligible renewable energy resource so long as it does not require a new or increased appropriation or diversion of water from a watercourse.

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

(c) “Energy Commission” means the State Energy Resources Conservation and Development Commission.

(d) “Local publicly owned electric utility” has the same meaning as provided in subdivision (d) of Section 9604.

(e) “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 article is intended to imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling a retail seller’s obligation to comply with this article.

(f) “Renewables portfolio standard” means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller is required to procure pursuant to this article.

(g) (1) “Renewable energy credit” means a certificate of proof, issued through the accounting system established by the Energy Commission pursuant to Section 399.13, that one unit of electricity was generated and delivered by an eligible renewable energy resource.

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

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

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

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

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

(3) An electric service provider, as defined in Section 218.3, for all sales of electricity to customers beginning January 1, 2006. The commission shall institute a rulemaking to determine the manner in which electric service providers will participate in the renewables portfolio standard program. The electric service provider shall be subject to the same terms and conditions applicable to an electrical corporation pursuant to this article. Nothing in this paragraph shall impair a contract entered into between an electric service provider and a retail customer prior to the suspension of direct access by the commission pursuant to Section 80110 of the Water Code.

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

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

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

(C) A local publicly owned electric utility.

SEC. 15. Section 399.13 of the Public Utilities Code is amended to read:

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

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

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

from the commission. The commission shall collect data from electrical corporations and remit the data to the Energy Commission within 90 days of the request.

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

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

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

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

(e) Allocate and award supplemental energy payments pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, to eligible renewable energy resources to cover above-market costs of renewable energy. A project selected by an electrical corporation may receive supplemental energy payments only if it results from a competitive solicitation that is found by the commission to comply with the California Renewables Portfolio Standard Program under this article and the project has entered into an electricity purchase agreement resulting from that solicitation that is approved by the commission. A project selected for an electricity purchase agreement by another retail seller may receive supplemental energy payments only if the retail seller demonstrates to the commission that the selection of the project is consistent with the results of a least-cost and best-fit process, and that the supplemental energy payments are reasonable in comparison to those paid under similar contracts with other retail sellers.

SEC. 16. Section 399.14 of the Public Utilities Code is amended to read:

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

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

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

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

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

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

(I) Utilize flexible delivery points.

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

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

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

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

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

(A) An assessment of annual or multiyear portfolio supplies and demand to determine the optimal mix of eligible renewable energy

resources with deliverability characteristics that may include peaking, dispatchable, baseload, firm, and as-available capacity.

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

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

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

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

(b) The commission may authorize a retail seller to enter into a contract of less than 10 years' duration with an eligible renewable energy resource, subject to the following conditions:

(1) No supplemental energy payments shall be awarded for a contract of less than 10 years' duration. The ineligibility of contracts of less than 10 years' duration for supplemental energy payments pursuant to this paragraph does not constitute an insufficiency in supplemental energy payments pursuant to paragraph (4) or (5) of subdivision (b) of Section 399.15.

(2) The commission has established, for each retail seller, minimum quantities of eligible renewable energy resources to be procured either through contracts of at least 10 years' duration or from new facilities commencing commercial operations on or after January 1, 2005.

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

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

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

(f) (1) The commission may authorize a procurement entity to enter into contracts on behalf of customers of a retail seller for deliveries of

eligible renewable energy resources to satisfy annual renewables portfolio standard obligations. The commission may not require any person or corporation to act as a procurement entity or require any party to purchase eligible renewable energy resources from a procurement entity.

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

(3) A project selected for a long-term electricity purchase contract of more than 10 years' duration by a procurement entity through a competitive solicitation, and approved by the commission, may receive supplemental energy payments from the Energy Commission if the transaction satisfies the requirements of subdivision (b) of Section 25743 of the Public Resources Code.

(g) Procurement and administrative costs associated with long-term contracts entered into by an electrical corporation for eligible renewable energy resources pursuant to this article, at or below the market price determined by the commission pursuant to subdivision (c) of Section 399.15, shall be deemed reasonable per se, and shall be recoverable in rates.

(h) Construction, alteration, demolition, installation, and repair work on an eligible renewable energy resource that receives production incentives or supplemental energy payments pursuant to Sections 25742 and 25743 of the Public Resources Code, including work performed to qualify, receive, or maintain production incentives or supplemental energy payments is "public works" for the purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

SEC. 17. Section 399.15 of the Public Utilities Code is amended to read:

399.15. (a) In order to fulfill unmet long-term resource needs, the commission shall establish a renewables portfolio standard requiring all electrical corporations to procure a minimum quantity of electricity generated by eligible renewable energy resources as a specified percentage of total kilowatthours sold to their retail end-use customers each calendar year, if sufficient funds are made available pursuant to Section 399.6 and Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, to cover the above-market costs of eligible renewable energy resources.

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

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

to increase its procurement of renewable energy resources in the following year.

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

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

(4) In the event that a retail seller fails to procure sufficient eligible renewable energy resources in a given year to meet any annual target established pursuant to this subdivision, the retail seller shall procure additional eligible renewable energy resources in subsequent years to compensate for the shortfall if sufficient funds are made available pursuant to Section 399.6 and Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, to cover any above-market costs of eligible renewable energy resources.

(5) If supplemental energy payments from the Energy Commission, in combination with the market prices approved by the commission, are insufficient to cover any above-market costs of electricity procured from eligible renewable energy resources through an electricity purchase agreement of at least 10 years' duration, the commission shall allow a retail seller to limit its annual procurement obligation to the quantity of eligible renewable energy resources that can be procured with available supplemental energy payments. A retail seller shall not be required to enter into long-term contracts with operators of eligible renewable energy resources that exceed the market prices established pursuant to subdivision (c).

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

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

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

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

(d) The Energy Commission shall provide supplemental energy payments from funds in the New Renewable Resources Account of the Renewable Resource Trust Fund to eligible renewable energy resources pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, consistent with this article, for any above-market costs. Indirect costs associated with the purchase of eligible

renewable energy resources by an electrical corporation, including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades, shall not be eligible for supplemental energy payments, but are recoverable in rates, as authorized by the commission. The Energy Commission shall not award supplemental energy payments to service load that is not subject to the renewable energy public goods charge.

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

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

SEC. 18. Section 399.16 of the Public Utilities Code is repealed.

SEC. 19. Section 399.16 is added to the Public Utilities Code, to read:

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

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

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

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

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

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

(6) No renewable energy credits shall be created for electricity generated under any electricity purchase contract executed after January 1,

2005, pursuant to the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Sec. 2601 et seq.). Deliveries under the electricity purchase contracts shall be tracked through the accounting system described in subdivision (b) of Section 399.12 and count towards the renewables portfolio standard obligations of the purchasing retail seller.

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

(8) No retail seller shall be obligated to procure renewable energy credits to satisfy the requirements of this article in the event that supplemental energy payments, in combination with the market prices approved by the commission, are insufficient to cover the above-market costs of long-term contracts, of more than 10 years' duration, with eligible renewable energy resources.

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

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

SEC. 20. Article 9 (commencing with Section 635) is added to Chapter 3 of Part 1 of Division 1 of the Public Utilities Code, to read:

#### Article 9. Long-Term Plans and Procurement Plans

635. In a long-term plan adopted by an electrical corporation or in a procurement plan implemented by a local publicly owned electric utility, the electrical corporation or local publicly owned electric utility shall adopt a strategy applicable both to newly constructed or repowered generation owned and procured by the electrical corporation or local publicly owned electric utility to achieve efficiency in the use of fossil fuels and to address carbon emissions.

SEC. 21. Section 2854 is added to Chapter 9 of Part 2 of Division 1 of the Public Utilities Code, to read:

2854. (a) Notwithstanding Section 7550.5 of the Government Code, on or before January 1, 2008, the commission shall report to the Legislature on the feasibility, desirability, and design of performance-based incentives for solar energy systems of less than 30 kilowatt.

(b) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

SEC. 22. By June 30, 2007, the Public Utilities Commission, in consultation with the State Energy Resources Conservation and Development Commission, shall review the impact of allowing supplemental energy payments to be applied toward contracts for the procurement of eligible renewable energy resources that are of a duration

of less than 10 years, and to report to the Legislature with the results of the review, including both of the following:

(a) The impact that higher priced short-term contracts may have on the allocation of supplemental energy payments.

(b) Recommended methods to fairly allocate supplemental energy payments for the above-market costs of short-term contracts that ensure that no more supplemental energy payments are paid for those contracts than would have been allocated for an equivalent long-term contract.

SEC. 23. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, 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.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

## Senate Bill No. 380

### CHAPTER 544

An act to amend Section 399.20 of the Public Utilities Code, relating to energy.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 380, Kehoe. Renewable energy resources.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined. 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 an eligible renewable energy resource with an effective capacity of not more than one megawatt, is located on property owned or under the control of a public water or wastewater agency, is sized to offset part or all of the electricity demand of the public water or wastewater agency, and meets other deliverability and interconnection requirements. The tariff is required to provide for payment for every kilowatthour of electricity generated by the electric generation facility at a market price determined by the commission pursuant to a specified law, for a period of 10, 15, or 20 years. Existing law requires the electrical corporation to make this tariff available to public water or wastewater agencies 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 250 megawatts, or the electrical corporation meets its proportionate share of the 250 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 extend availability of the tariff to electric generation facilities not larger than 1.5 megawatts that otherwise comply with the above-described requirements.

This bill would instead require every electrical corporation to file with the commission a standard tariff for electricity generated by an electric generation facility with an effective capacity of not more than 1.5 megawatts, that is located on property owned or under the control of a customer, and that meets other deliverability and interconnection requirements. The bill would require 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. The bill would authorize 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.

Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime. Because 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.

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

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

This bill would provide that its provisions would not become operative if SB 1714 of the 2007–08 Regular Session is enacted on or before January 1, 2009, amending Section 399.20 of the Public Utilities Code.

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

SECTION 1. Section 399.20 of the Public Utilities Code is amended to read:

399.20. (a) It is the policy of this state and the intent of the Legislature to encourage energy production from renewable energy resources.

(b) As used in this section, “electric generation facility” means an electric generation facility, owned and operated by a retail customer of an electrical corporation, and that meets all of the following criteria:

(1) Has an effective capacity of not more than one and one-half megawatts and is located on property owned or under the control of the customer.

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

(3) 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.

(4) Is an eligible renewable energy resource, as defined in Section 399.12.

(c) Every electrical corporation shall file with the commission a standard tariff for electricity generated by an electric generation facility.

(d) The tariff shall provide for payment for every kilowatthour of electricity generated by an electric generation facility at the market price as determined by the commission pursuant to Section 399.15 for a period of 10, 15, or 20 years, as authorized by the commission.

(e) Every electrical corporation shall 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. 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 of all electrical corporations.

(f) Every kilowatthour of electricity generated by the electric generation facility shall count toward the electrical corporation's renewables portfolio standard annual procurement targets for purposes of paragraph (1) of subdivision (b) of Section 399.15.

(g) The physical generating capacity of an electric generation facility shall count toward the electrical corporation's resource adequacy requirement for purposes of Section 380.

(h) 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.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only 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.

SEC. 3. This bill shall not become operative if Senate Bill 1714 of the 2007–08 Regular Session is enacted on or before January 1, 2009, and amends Section 399.20 of the Public Utilities Code.



Office of the Governor

ARNOLD SCHWARZENEGGER  
THE PEOPLE'S GOVERNOR

## EXECUTIVE ORDER EXECUTIVE ORDER S-3-05

06/01/2005

WHEREAS, California is particularly vulnerable to the impacts of climate change; and

WHEREAS, increased temperatures threaten to greatly reduce the Sierra snowpack, one of the State's primary sources of water; and

WHEREAS, increased temperatures also threaten to further exacerbate California's air quality problems and adversely impact human health by increasing heat stress and related deaths, the incidence of infectious disease, and the risk of asthma, respiratory and other health problems; and

WHEREAS, rising sea levels threaten California's 1,100 miles of valuable coastal real estate and natural habitats; and

WHEREAS, the combined effects of an increase in temperatures and diminished water supply and quality threaten to alter micro-climates within the state, affect the abundance and distribution of pests and pathogens, and result in variations in crop quality and yield; and

WHEREAS, mitigation efforts will be necessary to reduce greenhouse gas emissions and adaptation efforts will be necessary to prepare Californians for the consequences of global warming; and

WHEREAS, California has taken a leadership role in reducing greenhouse gas emissions by: implementing the California Air Resources Board motor vehicle greenhouse gas emission reduction regulations; implementing the Renewable Portfolio Standard that the Governor accelerated; and implementing the most effective building and appliance efficiency standards in the world; and

WHEREAS, California-based companies and companies with significant activities in California have taken leadership roles by reducing greenhouse gas (GHG) emissions, including carbon dioxide, methane, nitrous oxide and hydrofluorocarbons, related to their operations and developing products that will reduce GHG emissions; and

WHEREAS, companies that have reduced GHG emissions by 25 percent to 70 percent have lowered operating costs and increased profits by billions of dollars; and

WHEREAS, technologies that reduce greenhouse gas emissions are increasingly in demand in the worldwide marketplace, and California companies investing in these technologies are well-positioned to profit from this demand, thereby boosting California's economy, creating more jobs and providing increased tax revenue; and

WHEREAS, many of the technologies that reduce greenhouse gas emissions also generate operating cost savings to consumers who spend a portion of the savings across a variety of sectors of the economy; this increased spending creates jobs and an overall benefit to the statewide economy.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power invested in me by the Constitution and statutes of the State of California, do hereby order effective immediately:

1. That the following greenhouse gas emission reduction targets are hereby established for California: by 2010, reduce GHG emissions to 2000 levels; by 2020, reduce GHG emissions to 1990 levels; by 2050, reduce GHG

emissions to 80 percent below 1990 levels; and

2. That the Secretary of the California Environmental Protection Agency (“Secretary”) shall coordinate oversight of the efforts made to meet the targets with: the Secretary of the Business, Transportation and Housing Agency, Secretary of the Department of Food and Agriculture, Secretary of the Resources Agency, Chairperson of the Air Resources Board, Chairperson of the Energy Commission, and the President of the Public Utilities Commission; and
3. That the Secretary shall report to the Governor and the State Legislature by January 2006 and biannually thereafter on progress made toward meeting the greenhouse gas emission targets established herein; and
4. That the Secretary shall also report to the Governor and the State Legislature by January 2006 and biannually thereafter on the impacts to California of global warming, including impacts to water supply, public health, agriculture, the coastline, and forestry, and shall prepare and report on mitigation and adaptation plans to combat these impacts; and
5. That as soon as hereafter possible, this Order shall be filed with the Office of the Secretary of State and that widespread publicity and notice be given to this Order.



IN WITNESS WHEREOF I have here unto set my hand and caused the Great Seal of the State of California to be affixed this the first day of June 2005.

/s/ Arnold Schwarzenegger

Governor of California

## California Environmental Quality Act

Title 14. California Code of Regulations  
Chapter 3. Guidelines for Implementation of the  
California Environmental Quality Act  
Article 19. Categorical Exemptions

### *Section 15328. Small Hydroelectric Projects at Existing Facilities*

Class 28 consists of the installation of hydroelectric generating facilities in connection with existing dams, canals, and pipelines where:

- (a) The capacity of the generating facilities is 5 megawatts or less;
- (b) Operation of the generating facilities will not change the flow regime in the affected stream, canal, or pipeline including but not limited to:
  - (1) Rate and volume of flow;
  - (2) Temperature;
  - (3) Amounts of dissolved oxygen to a degree that could adversely affect aquatic life; and
  - (4) Timing of release.
- (c) New power lines to connect the generating facilities to existing power lines will not exceed one mile in length if located on a new right of way and will not be located adjacent to a wild or scenic river;
- (d) Repair or reconstruction of the diversion structure will not raise the normal maximum surface elevation of the impoundment;
- (e) There will be no significant upstream or downstream passage of fish affected by the project;
- (f) The discharge from the power house will not be located more than 300 feet from the toe of the diversion structure;
- (g) The project will not cause violations of applicable state or federal water quality standards;
- (h) The project will not entail any construction on or alteration of a site included in or eligible for inclusion in the National Register of Historic Places; and
- (i) Construction will not occur in the vicinity of any endangered, rare, or threatened species.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

## **Title 18: Conservation of Power and Water Resources**

### **PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS**

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#### **Subpart K—Exemption of Small Hydroelectric Power Projects of 5 Megawatts or Less**

##### **§ 4.101 Applicability.**

This subpart provides procedures for exemption on a case-specific basis from all or part of Part I of the Federal Power Act (Act), including licensing, for small hydroelectric power projects as defined in §4.30(b)(29).

(Energy Security Act of 1980, Pub. L. 96–294, 94 Stat. 611; Federal Power Act, as amended (16 U.S.C. 792–828c); Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601–2645); and the Department of Energy Organization Act (42 U.S.C. 7101–7352); E.O. 12009, 3 CFR 142 (1978))

[Order 202, 47 FR 4243, Jan. 29, 1982, as amended by Order 413, 50 FR 11687, Mar. 25, 1985; Order 482, 52 FR 39630, Oct. 23, 1987; Order 2002, 68 FR 51121, Aug. 25, 2003]

##### **§ 4.102 Surrender of exemption.**

(a) To voluntarily surrender its exemption, a holder of an exemption for a small hydroelectric power project must file a petition with the Commission.

(b) (1) If construction has begun, prior to filing a petition with the Commission, the exemption holder must consult with the fish and wildlife agencies in accordance with §4.38, substituting for the information required under §4.38(b)(1) information appropriate to the disposition and restoration of the project works and lands. The petition must set forth the exemption holder's plans with respect to disposition and restoration of the project works and lands.

(2) If construction has begun, public notice of the petition will be given, and, at least 30 days thereafter, the Commission will act upon the petition. New applications involving the site may be filed on the next business day.

(c) If no construction had begun, unless the Commission issues an order to the contrary, the surrender will take effect at the close of the thirtieth day after the Commission issues a public notice of receipt of the petition. New applications involving the site may be filed on the next business day.

(d) Exemptions may be surrendered only upon fulfillment by the exemption holder of such obligations under the exemption as the Commission may prescribe and, if construction has begun, upon such conditions with respect to the disposition of such project works and restoration of project lands as may be determined by the Commission and the Federal and state fish and wildlife agencies.

(e) Where occupancy of United States lands or reservations has been permitted by a Federal agency having supervision over such lands, the exemption holder must concurrently notify that agency of the petition to surrender and of the steps that will be taken to restore the affected U.S. lands or reservations.

[Order 413, 50 FR 11688, Mar. 25, 1985]

##### **§ 4.103 General provisions for case-specific exemption.**

(a) *Exemptible projects.* Subject to the provisions in paragraph (b) of this section, §4.31(c), and §§4.105 and 4.106, the Commission may exempt on a case-specific basis any small hydroelectric power project from all or part of Part I of the Act, including licensing requirements. Any applications for exemption for a project shall conform to the requirements of §§4.107 or 4.108, as applicable.

(b) *Limitation for licensed water power project.* The Commission will not accept for filing an application for exemption from licensing for any project that is only part of a licensed water power project.

(c) *Waiver.* In applying for case-specific exemption from licensing, a qualified exemption applicant may petition under §385.207 of this chapter for waiver of any specific provision of §§4.102 through 4.107. The Commission will grant a waiver only if consistent with section 408 of the Energy Security Act of 1980.

[Order 413, 50 FR 11688, Mar. 25, 1985, as amended by Order 503, 53 FR 36568, Sept. 21, 1988]

#### **§ 4.104 Amendment of exemption.**

(a) An exemption holder must construct and operate its project as described in the exemption application approved by the Commission or its delegate.

(b) If an exemption holder desires to change the design, location, method of construction or operation of its project, it must first notify the appropriate Federal and state fish and wildlife agencies and inform them in writing of the changes it intends to implement. If these agencies determine that the changes would not cause the project to violate the terms and conditions imposed by the agencies, and if the changes would not materially alter the design, location, method of construction or operation of the project, the exemption holder may implement the changes. If any of these agencies determines that the changes would cause the project to violate the terms and conditions imposed by that agency, or if the changes would materially alter the design, location, method of construction or the operation of the project works, the exemption holder may not implement the changes without first acquiring authorization from the Commission to amend its exemption or acquiring a license for the project works that authorizes the project, as changed.

(c) An application to amend an exemption may be filed only by the holder of an exemption. An application to amend an exemption will be governed by the Commission's regulations governing applications for exemption. The Commission will not accept applications in competition with an application to amend an exemption, unless the Director of the Office of Energy Projects determines that it is in the public interest to do so.

[Order 413, 50 FR 11688, Mar. 25, 1985, as amended by Order 699, 72 FR 45324, Aug. 14, 2007]

#### **§ 4.105 Action on exemption applications.**

(a) *Exemption from provisions other than licensing.* An application for exemption of a small hydroelectric power project from provisions of Part I of the Act other than the licensing requirement will be processed and considered as part of the related application for license or amendment of license.

(b) (1) *Consultation.* The Commission will circulate a notice of application for exemption from licensing to interested agencies and Indian tribes at the time the applicant is notified that the application is accepted for filing.

(2) *Non-standard terms and conditions.* In approving any application for exemption from licensing, the Commission may prescribe terms or conditions in addition to those set forth in §4.106 in order to:

- (i) Protect the quality or quantity of the related water supply;
- (ii) Otherwise protect life, health, or property;
- (iii) Avoid or mitigate adverse environmental impact; or
- (iv) Better conserve, develop, or utilize in the public interest the water resources of the region.

(Energy Security Act of 1980, Pub. L. 96-294, 94 Stat. 611; Federal Power Act, as amended (16 U.S.C. 792-828c); Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601-2645); and the Department of Energy Organization Act (42 U.S.C. 7101-7352); E.O. 12009, 3 CFR 142 (1978))

[Order 106, 45 FR 76123, Nov. 18, 1980, as amended by Order 202, 47 FR 4246, Jan. 29, 1982; Order 413, 50 FR 11688, Mar. 25, 1985; Order 533, 56 FR 23154, May 20, 1991]

**§ 4.106 Standard terms and conditions of case-specific exemption from licensing.**

Any case-specific exemption from licensing granted for a small hydroelectric power project is subject to the following standard terms and conditions:

(a) *Article 1.* The Commission reserves the right to conduct investigations under sections 4(g), 306, 307, and 311 of the Federal Power Act with respect to any acts, complaints, facts, conditions, practices, or other matters related to the construction, operation, or maintenance of the exempt project. If any term or condition of the exemption is violated, the Commission may revoke the exemption, issue a suitable order under section 4(g) of the Federal Power Act, or take appropriate action for enforcement, forfeiture, or penalties under Part III of the Federal Power Act.

(b) *Article 2.* The construction, operation, and maintenance of the exempt project must comply with any terms and conditions that the United States Fish and Wildlife Service, the National Marine Fisheries Service, and any state fish and wildlife agencies have determined are appropriate to prevent loss of, or damage to, fish or wildlife resources or otherwise to carry out the purposes of the Fish and Wildlife Coordination Act, as specified in exhibit E of the application for exemption from licensing or in the comments submitted in response to the notice of exemption application.

(c) *Article 3.* The Commission may revoke this exemption if actual construction of any proposed generating facilities has not begun within two years or has not been completed within four years from the date on which this exemption was granted. If an exemption is revoked under this article, the Commission will not accept from the prior exemption holder a subsequent application for exemption from licensing for the same project within two years of the revocation.

(d) *Article 4.* This exemption is subject to the navigation servitude of the United States if the project is located on navigable waters of the United States.

(e) *Article 5.* This exemption does not confer any right to use or occupy any Federal lands that may be necessary for the development or operation of the project. Any right to use or occupy any Federal lands for those purposes must be obtained from the administering Federal land agencies. The Commission may accept a license application submitted by any qualified license applicant and revoke this exemption, if any necessary right to use or occupy Federal lands for those purposes has not been obtained within one year from the date on which this exemption was granted.

(f) *Article 6.* In order to best develop, conserve, and utilize in the public interest the water resources of the region, the Commission may require that the exempt facilities be modified in structure or operation or may revoke this exemption.

(g) *Article 7.* The Commission may revoke this exemption if, in the application process, material discrepancies, inaccuracies, or falsehoods were made by or on behalf of the applicant.

(h) *Article 8.* Any exempted small hydroelectric power project that utilizes a dam that is more than 33 feet in height above streambed, as defined in 18 CFR 12.31(c) of this chapter, impounds more than 2,000 acre-feet of water, or has a significant or high hazard potential, as defined in 33 CFR part 222, is subject to the following provisions of 18 CFR part 12, as it may be amended:

- (1) Section 12.4(b)(1) (i) and (ii), (b)(2) (i) and (iii), (b)(iv), and (b)(v);
- (2) Section 12.4(c);
- (3) Section 12.5;
- (4) Subpart C; and
- (5) Subpart D.

For the purposes of applying these provisions of 18 CFR part 12, the exempted project is deemed to be a licensed project development and the owner of the exempted project is deemed to be a licensee.

(i) Before transferring any property interests in the exempt project, the exemption holder must inform the transferee of the terms and conditions of the exemption. Within 30 days of transferring the property interests, the exemption holder must inform the Commission of the identity and address of the transferee. [Order 106, 45 FR 76123, Nov. 18, 1980; 45 FR 77420, Nov. 24, 1980, as amended by Order 202, 47 FR 4246, Jan. 29, 1982; Order 413, 50 FR 11688, Mar. 25, 1985; Order 482, 52 FR 39630, Oct. 23, 1987; Order 413–A, 56 FR 31331, July 10, 1991]

**§ 4.107 Contents of application for exemption from licensing.**

(a) *General requirements.* An application for exemption from licensing submitted under this subpart must contain the introductory statement, the exhibits described in this section, and, if the project structures would use or occupy any lands other than Federal lands, an appendix containing documentary evidence showing that applicant has the real property interests required under §4.31(c)(2)(ii). The applicant must identify in its application all Indian tribes that may be affected by the project.

(b) *Introductory statement.* The application must include an introductory statement that conforms to the following format:

Before the Federal Energy Regulatory Commission  
*Application for Exemption of Small Hydroelectric Power Project From Licensing*

(1) [Name of applicant] applies to the Federal Energy Regulatory Commission for an exemption for [name of project], a small hydroelectric power project that is proposed to have an installed capacity of 5 megawatts or less, from licensing under the Federal Power Act. [If applicable: The project is currently licensed as FERC Project No. \_\_\_\_\_.]

(2) The location of the project is:  
[State or territory] \_\_\_\_\_  
\_\_\_\_\_  
[County] \_\_\_\_\_  
[Township or nearby town] \_\_\_\_\_  
\_\_\_\_\_  
[Stream or body of water] \_\_\_\_\_  
\_\_\_\_\_

(3) The exact name and business address of each applicant are:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(4) The exact name and business address of each person authorized to act as agent for the applicant in this application are:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(5) [Name of applicant] is [specify, as appropriate: a citizen of the United States or other identified nation; an association of citizens of the United States or other identified nation; a municipality; a state; or a corporation incorporated under the laws of (specify the United States or the state or nation of incorporation, as appropriate).]

(c) *Exhibit A.* Exhibit A must describe the small hydroelectric power project and its proposed mode of operation. To the extent feasible, the information in this exhibit may be submitted in tabular form. The applicant must submit the following information:

(1) A brief description of any existing dam and impoundment proposed to be utilized by the small hydroelectric power project and any other existing or proposed project works and appurtenant

facilities, including intake facilities, diversion structures, powerhouses, primary transmission lines, penstocks, pipelines, spillways, and other structures, and the sizes, capacities, and construction materials of those structures.

(2) The number of existing and proposed generating units at the project, including auxiliary units, the capacity of each unit, any provisions for future units, and a brief description of any plans for retirement or rehabilitation of existing generating units.

(3) The type of each hydraulic turbine of the small hydroelectric power project.

(4) A description of how the power plant is to be operated, that is, run-of-river or peaking.

(5) A graph showing a flow duration curve for the project. Identify stream gauge(s) and period of record used. If a synthetic record is utilized, provide details concerning its derivation. Furnish justification for selection of installed capacity if the hydraulic capacity of proposed generating unit(s) plus the minimum flow requirements, if not usable for power production, is less than the stream flow that is exceeded 25 percent of the time.

(6) Estimations of:

- (i) The average annual generation in kilowatt-hours;
- (ii) The average and design head of the power plant;
- (iii) The hydraulic capacity of each turbine of the power plant (flow through the plant) in cubic feet per second;
- (iv) The number of surface acres of the man-made or natural impoundment used, if any, at its normal maximum surface elevation and its net and gross storage capacities in acre-feet.

(7) The planned date for beginning and completing the proposed construction or development of generating facilities.

(8) A description of the nature and extent of any repair, reconstruction, or other modification of a dam that would occur in association with construction or development of the proposed small hydroelectric power project, including a statement of the normal maximum surface area and normal maximum surface elevation of any existing impoundment before and after construction.

(d) *Exhibit G.* Exhibit G is a map of the project and boundary and must conform to the specifications of §4.41(h) of this chapter.

(e) *Exhibit E.* This exhibit is an environmental report that must include the following information, commensurate with the scope and environmental impact of the construction and operation of the small hydroelectric power project. See §4.38 for consultation requirements.

(1) A description of the environmental setting of the project, including vegetative cover, fish and wildlife resources, water quality and quantity, land and water uses, recreational uses, historical and archeological resources, and scenic and aesthetic resources. The report must list any endangered or threatened plant and animal species, any critical habitats, and any sites eligible for or included on the National Register of Historic Places. The applicant may obtain assistance in the preparation of this information from state natural resources agencies, the state historic preservation officer, and from local offices of Federal natural resources agencies.

(2) A description of the expected environmental impacts from the proposed construction or development and the proposed operation of the small hydroelectric power project, including any impacts from any proposed changes in the capacity and mode of operation of the project if it is already generating electric power, and an explanation of the specific measures proposed by the applicant, the agencies consulted, and others to protect and enhance environmental resources and values and to mitigate adverse impacts of the project on such resources.

(3) Any additional information the applicant considers important.

(f) *Exhibit F*. Exhibit F is a set of drawings showing the structures and equipment of the small hydroelectric facility and must conform to the specifications of §4.41(g) of this chapter.

[Order 106, 45 FR 76123, Nov. 18, 1980, as amended by Order 225, 47 FR 19056, May 3, 1982; Order 413, 50 FR 11689, Mar. 25, 1985; Order 494, 53 FR 15381, Apr. 29, 1988; Order 533, 56 FR 23154, May 20, 1991; Order 2002, 68 FR 51121, Aug. 25, 2003; Order 699, 72 FR 45324, Aug. 14, 2007]

**§ 4.108 Contents of application for exemption from provisions other than licensing.**

An application for exemption of a small hydroelectric power project from provisions of Part I of the Act other than the licensing requirement need not be prepared according to any specific format, but must be included as an identified appendix to the related application for license or amendment of license. The application for exemption must list all sections or subsections of Part I of the Act for which exemption is requested.

[Order 106, 45 FR 76123, Nov. 18, 1980]

**Title 18: Conservation of Power and Water Resources**

**PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS**

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**Subpart J—Exemption of Small Conduit Hydroelectric Facilities**

**§ 4.90 Applicability and purpose.**

This subpart implements section 30 of the Federal Power Act and provides procedures for obtaining an exemption for constructed or unconstructed small conduit hydroelectric facilities, as defined in §4.30(b)(28), from all or part of the requirements of Part I of the Federal Power Act, including licensing, and the regulations issued under Part I.

[Order 76, 45 FR 28090, Apr. 28, 1980, as amended by Order 413, 50 FR 11686, Mar. 25, 1985; Order 2002, 68 FR 51121, Aug. 25, 2003]

**§ 4.91 [Reserved]**

**§ 4.92 Contents of exemption application.**

(a) An application for exemption for this subpart must include:

- (1) An introductory statement, including a declaration that the facility for which application is made meets the requirements of §4.30(b)(28), the facility qualifies but for the discharge requirement of §4.30(b)(28)(v), the introductory statement must identify that fact and state that the application is accompanied by a petition for waiver of §4.30(b)(28)(v), filed pursuant to §385.207 of this chapter);
- (2) Exhibits A, E, F, and G.
- (3) An appendix containing documentary evidence showing that the applicant has the real property interests required under §4.31(b); and
- (4) Identification of all Indian tribes that may be affected by the project.

(b) *Introductory Statement.* The introductory statement must be set forth in the following format:

Before the Federal Energy Regulatory Commission

*Application for Exemption for Small Conduit Hydroelectric Facility* [Name of applicant] applies to the Federal Energy Regulatory Commission for an exemption for the [name of facility], a small conduit hydroelectric facility that meets the requirements of [insert the following language, as appropriate: “§4.30(b)(28) of this subpart” or “§4.30(b)(28) of this subpart, except paragraph

(b)(28)(v)”, from certain provisions of Part I of the Federal Power Act.

The location of the facility is:

State or Territory: \_\_\_\_\_

County: \_\_\_\_\_

Township or nearby town: \_\_\_\_\_

The exact name and business address of each applicant is:

\_\_\_\_\_  
The exact name and business address of each person authorized to act as agent for the applicant in this application is:

\_\_\_\_\_  
[Name of applicant] is [a citizen of the United States, an association of citizens of the United States, a municipality, State, or a corporation incorporated under the laws of (specify the United States or the state of incorporation, as appropriate), as appropriate].

The provisions of Part I of the Federal Power Act for which exemption is requested are:

[List here all sections or subsections for which exemption is requested.]

[If the facility does not meet the requirement of §4.30(b)(28)(v), add the following sentence: "This application is accompanied by a petition for waiver of §4.30(b)(28)(v), submitted pursuant to 18 CFR 385.207."]

(c) *Exhibit A.* Exhibit A must describe the small conduit hydroelectric facility and proposed mode of operation with appropriate references to Exhibits F and G. To the extent feasible the information in this exhibit may be submitted in tabular form. The following information must be included:

- (1) A brief description of any conduits and associated consumptive water supply facilities, intake facilities, powerhouses, and any other structures associated with the facility.
- (2) The proximate natural sources of water that supply the related conduit.
- (3) The purposes for which the conduit is used.
- (4) The number of generating units, including auxiliary units, the capacity of each unit, and provisions, if any, for future units.
- (5) The type of each hydraulic turbine.
- (6) A description of how the plant is to be operated, manually or automatically, and whether the plant is to be used for peaking.
- (7) Estimations of:
  - (i) The average annual generation in kilowatt hours;
  - (ii) The average head of the plant;
  - (iii) The hydraulic capacity of the plant (flow through the plant) in cubic feet per second;
  - (iv) The average flow of the conduit at the plant or point of diversion (using best available data and explaining the sources of the data and the method of calculation); and
  - (v) The average amount of the flow described in paragraph (c)(7)(iv) of this section available for power generation.
- (8) The planned date for beginning construction of the facility.
- (9) If the hydroelectric facility discharges directly into a natural body of water and a petition for waiver of §4.30(b)(28)(v) has not been submitted, evidence that a quantity of water equal to or greater than the quantity discharged from the hydroelectric facility is withdrawn from that water body downstream into a conduit that is part of the same water supply system as the conduit on which the hydroelectric facility is located.
- (10) If the hydroelectric facility discharges directly to a point of agricultural, municipal, or industrial consumption, a description of the nature and location of that point of consumption.
- (11) A description of the nature and extent of any construction of a dam that would occur in association with construction of the proposed small conduit hydroelectric facility, including a statement of the normal maximum surface area and normal maximum surface elevation of any existing impoundment before and after that construction; and any evidence that the construction would occur for agricultural, municipal, or industrial consumptive purposes even if hydroelectric generating facilities were not installed.

(d) *Exhibit G.* Exhibit G is a map of the project and boundary and must conform to the specifications of §4.41(h) of this chapter.

(e) *Exhibit E.* This exhibit is an Environmental Report. It must be prepared pursuant to §4.38 and must include the following information, commensurate with the scope and environmental impact of the facility's construction and operation:

(1) A description of the environmental setting in the vicinity of the facility, including vegetative cover, fish and wildlife resources, water quality and quantity, land and water uses, recreational use, socio-economic conditions, historical and archeological resources, and visual resources. The report must give special attention to endangered or threatened plant and animal species, critical habitats, and sites eligible for or included on the National Register of Historic Places. The applicant may obtain assistance in the preparation of this information from State natural resources agencies, the State historic preservation officer, and from local offices of Federal natural resources agencies.

(2) A description of the expected environmental impacts resulting from the continued operation of an existing small conduit hydroelectric facility, or from the construction and operation of a proposed small conduit hydroelectric facility, including a discussion of the specific measures proposed by the applicant and others to protect and enhance environmental resources and to mitigate adverse impacts of the facility on them.

(3) A description of alternative means of obtaining an amount of power equivalent to that provided by the proposed or existing facility.

(4) Any additional information the applicant considers important.

(f) *Exhibit F.* Exhibit F is a set of drawings showing the structures and equipment of the small conduit hydroelectric facility and must conform to the specifications of §4.41(g) of this chapter.

[Order 76, 45 FR 28090, Apr. 28, 1980, as amended by Order 413, 50 FR 11686, Mar. 25, 1985; Order 533, 56 FR 23153, May 20, 1991; Order 2002, 68 FR 51121, Aug. 25, 2003; Order 699, 72 FR 45324, Aug. 14, 2007]

#### **§ 4.93 Action on exemption applications.**

(a) An application for exemption that does not meet the eligibility requirements of §4.30(b)(28)(v) may be accepted, provided the application has been accompanied by a request for waiver under §4.92(a)(1) and the waiver request has not been denied. Acceptance of an application that has been accompanied by a request for waiver under §4.92(a)(1) does not constitute a ruling on the waiver request, unless expressly stated in the acceptance.

(b) The Commission will circulate a notice of application for exemption to interested agencies and Indian tribes at the time the applicant is notified that the application is accepted for filing.

(c) In granting an exemption the Commission may prescribe terms or conditions in addition to those set forth in §4.94, in order to:

- (1) Protect the quality or quantity of the related water supply for agricultural, municipal, or industrial consumption;
- (2) Otherwise protect life, health, or property;
- (3) Avoid or mitigate adverse environmental impact; or
- (4) Conserve, develop, or utilize in the public interest the water power resources of the region.

(d) *Conversion to license application.*

(1) If an application for exemption under this subpart is denied by the Commission, the applicant may convert the exemption application into an application for license for the hydroelectric project.

(2) The applicant must provide the Commission with written notification, within 30 days after the date of issuance of the order denying exemption, that it intends to convert the exemption application into a license application. The applicant must submit to the Commission, no later than 90 days after the date of issuance of the order denying exemption, additional information that is necessary to conform the exemption application to the relevant regulations for a license application.

(3) If all the information timely submitted is found sufficient, together with the application for exemption, to conform to the relevant regulations for a license application, the converted

application will be considered *accepted for filing* as of the date that the exemption application was accepted for filing.

[Order 76, 45 FR 28090, Apr. 28, 1980, as amended by Order 413, 50 FR 11687, Mar. 25, 1985; Order 533, 56 FR 23153, May 20, 1991; Order 2002, 68 FR 51121, Aug. 25, 2003]

#### **§ 4.94 Standard terms and conditions of exemption.**

Any exemption granted under §4.93 for a small conduit hydroelectric facility is subject to the following standard terms and conditions:

(a) *Article 1.* The Commission reserves the right to conduct investigations under sections 4(g), 306, 307, and 311 of the Federal Power Act with respect to any acts, complaints, facts, conditions, practices, or other matters related to the construction, operation, or maintenance of the exempt facility. If any term or condition of the exemption is violated, the Commission may revoke the exemption, issue a suitable order under section 4(g) of the Federal Power Act, or take appropriate action for enforcement, forfeiture, or penalties under Part III of the Federal Power Act.

(b) *Article 2.* The construction, operation, and maintenance of the exempt project must comply with any terms and conditions that the United States Fish and Wildlife Service, the National Marine Fisheries Service, and any state fish and wildlife agencies have determined are appropriate to prevent loss of, or damage to, fish or wildlife resources or otherwise to carry out the purposes of the Fish and Wildlife Coordination Act, as specified in exhibit E of the application for exemption from licensing or in the comments submitted in response to the notice of exemption application.

(c) *Article 3.* The Commission may revoke this exemption if actual construction of any proposed generating facilities has not begun within two years or has not been completed within four years from the effective date of this exemption. If an exemption is revoked under this article, the Commission will not accept from the prior exemption holder a subsequent application for exemption from licensing or a notice of exemption from licensing for the same project within two years of the revocation.

(d) *Article 4.* In order to best develop, conserve, and utilize in the public interest the water resources of the region, the Commission may require that the exempt facilities be modified in structure or operation or may revoke this exemption.

(e) *Article 5.* The Commission may revoke this exemption if, in the application process, material discrepancies, inaccuracies, or falsehoods were made by or on behalf of the applicant.

(f) *Article 6.* Before transferring any property interests in the exempt project, the exemption holder must inform the transferee of the terms and conditions of the exemption. Within 30 days of transferring the property interests, the exemption holder must inform the Commission of the identity and address of the transferee.

[Order 76, 45 FR 28090, Apr. 28, 1980, as amended by Order 413, 50 FR 11687, Mar. 25, 1985; Order 413–A, 56 FR 31331, July 10, 1991]

#### **§ 4.95 Surrender of exemption.**

(a) To voluntarily surrender its exemption, a holder of an exemption for a small conduit hydroelectric facility must file a petition with the Commission.

(b) (1) If construction has begun, prior to filing a petition with the Commission, the exemption holder must consult with the fish and wildlife agencies in accordance with §4.38, substituting for the information required under §4.38(b)(1) information appropriate to the disposition and restoration

of the project works and lands. The petition must set forth the exemption holder's plans with respect to disposition and restoration of the project works and lands.

(2) If construction has begun, public notice of the petition will be given, and, at least 30 days thereafter, the Commission will act upon the petition.

(c) If no construction has begun, unless the Commission issues an order to the contrary, the exemption will remain in effect through the thirtieth day after the Commission issues a public notice of receipt of the petition. New applications involving the site of the surrendered exemption may be filed on the next business day.

(d) Exemptions may be surrendered only upon fulfillment by the exemption holder of such obligations under the exemption as the Commission may prescribe and, if construction has begun, upon such conditions with respect to the disposition of such project works and restoration of project lands as may be determined by the Commission and the Federal and state fish and wildlife agencies.

[Order 413, 50 FR 11687, Mar. 25, 1985]

#### **§ 4.96 Amendment of exemption.**

(a) An exemption holder must construct and operate its project as described in the exemption application approved by the Commission or its delegate.

(b) If an exemption holder desires to change the design, location, method of construction or operation of its project, it must first notify the appropriate Federal and state fish and wildlife agencies and inform them in writing of the changes it intends to implement. If these agencies determine that the changes would not cause the project to violate the terms and conditions imposed by the agencies, and if the changes would not materially alter the design, location, method of construction or operation of the project, the exemption holder may implement the changes. If any of these agencies determines that the changes would cause the project to violate the terms and conditions imposed by the agencies, or if the changes would materially alter the design, location, method of construction or the operation of the project works, the exemption holder may not implement the changes without first acquiring authorization from the Commission to amend its exemption, or acquiring a license that authorizes the project, as changed.

(c) An application to amend an exemption may be filed only by the holder of the exemption. An application to amend an exemption will be governed by the Commission's regulations governing applications for exemption. The Commission will not accept applications in competition with an application to amend an exemption, unless the Director of the Office of Energy Projects determines that it is in the public interest to do so.

[Order 413, 50 FR 11687, Mar. 25, 1985, as amended by Order 699, 72 FR 45324, Aug. 14, 2007]