



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

AB-1191 California Renewables Portfolio Standard Program: hydroelectric generation. (2025-2026)

SHARE THIS:  

Date Published: 02/21/2025 09:00 PM

CALIFORNIA LEGISLATURE— 2025–2026 REGULAR SESSION

ASSEMBLY BILL

NO. 1191

Introduced by Assembly Member Tangipa

February 21, 2025

An act to amend Section 44258.5 of the Health and Safety Code, and to amend Sections 399.12, 399.25, and 399.30 of, and to repeal Sections 399.12.5 and 399.20.5 of, the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1191, as introduced, Tangipa. California Renewables Portfolio Standard Program: hydroelectric generation.

Existing law establishes the California Renewables Portfolio Standard Program, which requires the Public Utilities Commission to implement annual procurement targets for the procurement of eligible renewable energy resources, as defined, for all retail sellers, as defined, and requires local publicly owned electric utilities to adopt and implement renewable energy resources procurement plans to achieve the targets and goals of the program. Under existing law, eligible renewable energy resources include small hydroelectric generation facilities of 30 megawatts or less that meet specified criteria.

This bill would revise the definition of an eligible renewable energy resource for the purposes of the California Renewables Portfolio Standard Program to include all hydroelectric generating facilities and would make conforming changes.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 44258.5 of the Health and Safety Code is amended to read:

44258.5. (a) For ~~the~~ purposes of this section, the following ~~terms mean the following:~~ *definitions apply:*

- (1) "Local publicly owned electric utility" has the same meaning as defined in Section 224.3 of the Public Utilities Code.
- (2) "Retail seller" has the same meaning as set forth in ~~subdivision (j) of~~ Section 399.12 of the Public Utilities Code.
- (3) "Transportation electrification" has the same meaning as set forth in Section 237.5 of the Public Utilities Code.

(b) The state board shall identify and adopt appropriate policies, rules, or regulations to remove regulatory disincentives preventing retail sellers and local publicly owned electric utilities from facilitating the achievement of greenhouse gas emission reductions in other sectors through increased investments in transportation electrification. Policies to be considered shall include, but are not limited to, an allocation of greenhouse gas emissions allowances to retail sellers and local publicly owned electric utilities, or other regulatory mechanisms, to account for increased greenhouse gas emissions in the ~~electric~~ **electricity** sector from transportation electrification.

SEC. 2. 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) "Conduit hydroelectric facility" means a facility for the generation of electricity that uses only the hydroelectric potential of an existing pipe, ditch, flume, siphon, tunnel, canal, or other manmade conduit that is operated to distribute water for a beneficial use.~~

~~(b)~~

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

~~(c)~~

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

~~(d)~~

(c) "California balancing authority" ~~is~~ **means** a balancing authority with control over a balancing authority area primarily located in this state and operating for retail sellers and local publicly owned electric utilities subject to the requirements of this article and includes the Independent System Operator (ISO) and a local publicly owned electric utility operating a transmission grid that is not under the operational control of the ISO. A California balancing authority is responsible for the operation of the transmission grid within its metered ~~boundaries~~ **boundaries**, which is not limited by the political boundaries of the State of California.

~~(e)~~

(d) (1) "Eligible renewable energy resource" means ~~an~~ **a hydroelectric generating facility or any** electrical generating facility that meets the definition of a "renewable electrical generation facility" in Section 25741 of the Public Resources ~~Code, subject to the following:~~ **Code.**

~~(1)(A) An existing small hydroelectric generation facility of 30 megawatts or less shall be eligible only if a retail seller or local publicly owned electric utility procured the electricity from the facility as of December 31, 2005. A new hydroelectric facility that commences generation of electricity after December 31, 2005, is not an eligible renewable energy resource if it will cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.~~

~~(B) Notwithstanding subparagraph (A), a conduit hydroelectric facility of 30 megawatts or less that commenced operation before January 1, 2006, is an eligible renewable energy resource. A conduit hydroelectric facility of 30 megawatts or less that commences operation after December 31, 2005, is an eligible renewable energy resource so long as it does not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.~~

~~(C) A facility approved by the governing board of a local publicly owned electric utility prior to June 1, 2010, for procurement to satisfy renewable energy procurement obligations adopted pursuant to former Section 387, shall be certified as an eligible renewable energy resource by the Energy Commission pursuant to this article, if the facility is a "renewable electrical generation facility" as defined in Section 25741 of the Public Resources Code.~~

~~(D)(i) A small hydroelectric generation unit with a nameplate capacity not exceeding 40 megawatts that is operated as part of a water supply or conveyance system is an eligible renewable energy resource only for the retail seller or local publicly owned electric utility that procured the electricity from the unit as of December 31, 2005. No unit shall be eligible pursuant to this subparagraph if an application for certification is submitted to the Energy Commission after January 1, 2013. Only one retail seller or local publicly owned electric utility shall be deemed to have procured electricity from a given unit as of December 31, 2005.~~

~~(ii) Notwithstanding clause (i), a local publicly owned electric utility that meets the criteria of subdivision (j) of Section 399.30 may sell to another local publicly owned electric utility electricity from small hydroelectric generation units that~~

~~qualify as eligible renewable energy resources under clause (i), and that electricity may be used by the local publicly owned electric utility that purchased the electricity to meet its renewables portfolio standard procurement requirements. The total of all those sales from the utility shall be no greater than 100,000 megawatthours of electricity.~~
~~(iii) The amendments made to this subdivision by the act adding this subparagraph are intended to clarify existing law and apply from December 10, 2011.~~

(2) (A) A facility engaged in the combustion of municipal solid waste shall not be considered an eligible renewable energy resource.

(B) Subparagraph (A) does not apply to generation before January 1, 2017, from a facility located in *the County of Stanislaus* ~~County~~ that was operational ~~prior to~~ *before* September 26, 1996.

~~(f)~~

(e) "Procure" means to acquire through ownership or contract.

~~(g)~~

(f) "Procurement entity" means any person or corporation authorized by the commission to enter into contracts to procure eligible renewable energy resources on behalf of customers of a retail seller pursuant to subdivision (f) of Section 399.13.

~~(h)~~

(g) (1) "Renewable energy credit" means a certificate of proof associated with the generation of electricity from an eligible renewable energy resource, issued through the accounting system established by the Energy Commission pursuant to Section 399.25, 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~~ *usage* of biomass or biogas fuels.

(3) (A) Electricity generated by an eligible renewable energy resource attributable to the use of nonrenewable fuels, beyond a de minimis quantity used to generate electricity in the same process through which the facility converts renewable fuel to electricity, shall not result in the creation of a renewable energy credit. The Energy Commission shall set the de minimis quantity of nonrenewable fuels for each renewable energy technology at a level of no more than 2 percent of the total quantity of fuel used by the technology to generate electricity. The Energy Commission may adjust the de minimis quantity for an individual facility, up to a maximum of 5 percent, if it finds that all of the following conditions are met:

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

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

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

~~(B) Electricity generated by a small hydroelectric generation facility shall not result in the creation of a renewable energy credit unless the facility meets the requirements of subparagraph (A) or (D) of paragraph (1) of subdivision (e).~~

~~(C) Electricity generated by a conduit hydroelectric generation facility shall not result in the creation of a renewable energy credit unless the facility meets the requirements of subparagraph (B) of paragraph (1) of subdivision (e).~~

~~(D)~~

(B) Electricity generated by a facility engaged in the combustion of municipal solid waste shall not result in the creation of a renewable energy credit. This subparagraph does not apply to renewable energy credits that were generated before January 1, 2017, by a facility engaged in the combustion of municipal solid waste located in *the County of Stanislaus* ~~County~~ that was operational ~~prior to~~ *before* September 26, 1996, and sold pursuant to contracts entered into before January 1, 2017.

~~(f)~~

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

(i)

(i) "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. A community choice aggregator shall 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. The electric service provider shall be subject to the same terms and conditions applicable to an electrical corporation pursuant to this article. This paragraph does not impair a contract entered into between an electric service provider and a retail customer ~~prior to~~ before 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.

(k)

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

SEC. 3. Section 399.12.5 of the Public Utilities Code is repealed.

~~399.12.5.(a) Notwithstanding subdivision (c) of Section 399.12, a small hydroelectric generation facility that satisfies the criteria for an eligible renewable energy resource pursuant to Section 399.12 shall not lose its eligibility if efficiency improvements undertaken after January 1, 2008, cause the generating capacity of the facility to exceed 30 megawatts, and the efficiency improvements do not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow. The entire generating capacity of the facility shall be eligible.~~

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

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

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

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

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

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

~~(3) The hydroelectric generation facility is owned by a retail seller or a local publicly owned electric utility, was operational prior to January 1, 2007, the efficiency improvements are initiated on or after January 1, 2008, the efficiency improvements are not~~

the result of routine maintenance activities, as determined by the Energy Commission, and the efficiency improvements were not included in any resource plan sponsored by the facility owner prior to January 1, 2008.

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

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

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

SEC. 4. Section 399.20.5 of the Public Utilities Code is repealed.

~~399.20.5.(a) Notwithstanding paragraph (1) of subdivision (b) and paragraph (2) of subdivision (j) of Section 399.20, a conduit hydroelectric facility with an effective capacity of up to four megawatts that otherwise meets the requirements of Section 399.20 shall be eligible for the standard contract or tariff established pursuant to subdivision (c) of Section 399.20 if the electric generation facility meets all the following additional requirements:~~

~~(1) It was operational as of January 1, 1990.~~

~~(2) It delivers no more than three megawatts to the grid at any time.~~

~~(3) It complies with the electrical corporation's Electric Rule 21 tariff or other distribution access tariff.~~

~~(b) A facility meeting the requirements of subdivision (a) shall receive payment pursuant to paragraph (1) of subdivision (d) of Section 399.20, provided that no payment shall be made for any electricity delivered to the grid in excess of three megawatts at any time.~~

SEC. 5. Section 399.25 of the Public Utilities Code is amended to read:

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

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

(b) Design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers and local publicly owned electric utilities, to ensure that electricity generated by an eligible renewable energy resource is counted only once for the purpose of 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 and local publicly owned electric utilities, in accordance with the requirements of this article and the California Public Records Act (Division 10 (commencing with Section 7920.000) 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 of electricity associated with each renewable energy credit and protects against multiple counting of the same renewable energy credit. The Energy Commission shall consult with other western states and with the WECC in the development of this system.

(d) Certify, for purposes of compliance with the renewables portfolio standard requirements by a retail seller, the eligibility of renewable energy credits associated with eligible renewable energy resources procured by a local publicly owned electric utility, if the Energy Commission determines that all of the conditions of Section 399.31 have been met.

SEC. 6. Section 399.30 of the Public Utilities Code is amended to read:

399.30. (a) (1) To fulfill unmet long-term generation resource needs, each local publicly owned electric utility shall adopt and implement a renewable energy resources procurement plan that requires the utility to procure a minimum quantity of electricity products from eligible renewable energy resources, including renewable energy credits, as a specified percentage of total kilowatthours sold to the utility's retail end-use customers, each compliance period, to achieve the targets of subdivision (c).

(2) Beginning January 1, 2019, a local publicly owned electric utility subject to Section 9621 shall incorporate the renewable energy resources procurement plan required by this section as part of a broader integrated resource plan developed and adopted pursuant to Section 9621.

(b) The governing board shall implement procurement targets for a local publicly owned electric utility that require the utility to procure a minimum quantity of eligible renewable energy resources for each of the following compliance periods:

(1) January 1, 2011, to December 31, 2013, inclusive.

(2) January 1, 2014, to December 31, 2016, inclusive.

(3) January 1, 2017, to December 31, 2020, inclusive.

(4) January 1, 2021, to December 31, 2024, inclusive.

(5) January 1, 2025, to December 31, 2027, inclusive.

(6) January 1, 2028, to December 31, 2030, inclusive.

(c) The governing board of a local publicly owned electric utility shall ensure all of the following:

(1) The quantities of eligible renewable energy resources to be procured for the compliance period from January 1, 2011, to December 31, 2013, inclusive, are equal to an average of 20 percent of retail sales.

(2) The quantities of eligible renewable energy resources to be procured for all other compliance periods reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016, 33 percent by December 31, 2020, 44 percent by December 31, 2024, 52 percent by December 31, 2027, and 60 percent by December 31, 2030. The Energy Commission shall establish appropriate multiyear compliance periods for all subsequent years that require the local publicly owned electric utility to procure not less than 60 percent of retail sales of electricity products from eligible renewable energy resources.

(3) A local publicly owned electric utility shall adopt procurement requirements consistent with Section 399.16.

(4) Beginning January 1, 2014, in calculating the procurement requirements under this article, a local publicly owned electric utility may exclude from its total retail sales the kilowatthours generated by an eligible renewable energy resource that is credited to a participating customer pursuant to a voluntary green pricing or shared renewable generation program. Any exclusion shall be limited to electricity products that do not meet the portfolio content criteria set forth in paragraph (2) or (3) of subdivision (b) of Section 399.16. Any renewable energy credits associated with electricity credited to a participating customer shall not be used for compliance with procurement requirements under this article, shall be retired on behalf of the participating customer, and shall not be further sold, transferred, or otherwise monetized for any purpose. To the extent possible for generation that is excluded from retail sales under this subdivision, a local publicly owned electric utility shall seek to procure those eligible renewable energy resources that are located in reasonable proximity to program participants.

(d) (1) The governing board of a local publicly owned electric utility shall adopt procurement requirements consistent with subparagraph (B) of paragraph (5) of subdivision (a) of, and paragraph (1) of subdivision (b) of, Section 399.13.

(2) The governing board of a local publicly owned electric utility may adopt the following measures:

(A) Conditions that allow for delaying timely compliance consistent with subdivision (b) of Section 399.15.

(B) Cost limitations for procurement expenditures consistent with subdivision (c) of Section 399.15.

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

(f) Each local publicly owned electric utility shall annually post notice, in accordance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), whenever its governing body will

deliberate in public on its renewable energy resources procurement plan.

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

(h) For a local publicly owned electric utility that was in existence on or before January 1, 2009, that provides retail electric service to 15,000 or fewer customer accounts in California, and is interconnected to a balancing authority located outside this state but within the WECC, an eligible renewable energy resource includes a facility that is located outside California that is connected to the WECC transmission system, if all of the following conditions are met:

(1) The electricity generated by the facility is procured by the local publicly owned electric utility, is delivered to the balancing authority area in which the local publicly owned electric utility is located, and is not used to fulfill renewable energy procurement requirements of other states.

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

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

(i) Notwithstanding subdivision (a), for a local publicly owned electric utility that is a joint powers authority of districts established pursuant to state law on or before January 1, 2005, that furnishes electric services other than to residential customers, and is formed pursuant to the Irrigation District Law (Division 11 (commencing with Section 20500) of the Water Code), the percentage of total kilowatthours sold to the district's retail end-use customers, upon which the renewables portfolio standard procurement requirements in subdivision (b) are calculated, shall be based on the authority's average retail sales over the previous seven years. If the authority has not furnished electric service for seven years, then the calculation shall be based on average retail sales over the number of completed years during which the authority has provided electric service.

~~(j) A local publicly owned electric utility in a city and county that only receives greater than 67 percent of its electricity sources from hydroelectric generation located within the state that it owns and operates, and that does not meet the definition of a "renewable electrical generation facility" pursuant to Section 25741 of the Public Resources Code, shall be required to procure eligible renewable energy resources, including renewable energy credits, to meet only the electricity demands unsatisfied by its hydroelectric generation in any given year, in order to satisfy its renewable energy procurement requirements.~~

~~(k)(1) For purposes of this subdivision, "large hydroelectric generation" means electricity generated from an existing hydroelectric facility located within the state that does not qualify as an eligible renewable energy resource and, as of January 1, 2018, was owned by a local publicly owned electric utility, the federal government as a part of the federal Central Valley Project, or a joint powers agency formed and created pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code).~~

~~(2) If, during a year within a compliance period set forth in subdivision (b), a local publicly owned electric utility receives more than 40 percent of its retail sales from large hydroelectric generation under an ownership agreement or contract in effect as of January 1, 2018, it is not required to procure eligible renewable energy resources that exceed the lesser of the following for that year:~~

~~(A) The portion of the local publicly owned electric utility's retail sales unsatisfied by the local publicly owned electric utility's large hydroelectric generation.~~

~~(B) The soft target adopted by the Energy Commission for the intervening years of the relevant compliance period.~~

~~(3) An extension or renewal of a procurement agreement shall not be eligible to count towards the determination that the local publicly owned electric utility receives more than 40 percent of its retail sales from large hydroelectric generation in any year. This paragraph shall not apply to any agreement in effect on January 1, 2015, between a local publicly owned electric utility and the Western Area Power Administration or federal government as part of the federal Central Valley Project.~~

~~(4) The Energy Commission shall adjust the total quantities of eligible renewable energy resources to be procured by a local publicly owned electric utility for a compliance period to reflect any reductions required pursuant to paragraph (2).~~

~~(5) This subdivision does not modify the compliance obligation of a local publicly owned electric utility to satisfy the requirements of subdivision (c) of Section 399.16.~~

~~(h)~~

~~(j)~~ (1) (A) For purposes of this subdivision, "unavoidable long-term contracts and ownership agreements" means commitments for electricity from a coal-fired powerplant, located outside the state, originally entered into by a local publicly owned electric utility before June 1, 2010, that is not subsequently modified to result in an extension of the duration of the agreement or result in an increase in total quantities of energy delivered during any compliance period set forth in subdivision (b).

(B) The governing board of a local publicly owned electric utility shall demonstrate in its renewable energy resources procurement plan required pursuant to subdivision (a) that any cancellation or divestment of the commitment would result in significant economic harm to its retail customers that cannot be substantially mitigated through resale, transfer to another entity, early closure of the facility, or other feasible measures.

(2) For the compliance period set forth in paragraph (4) of subdivision (b), a local publicly owned electric utility meeting the requirement of subparagraph (B) of paragraph (1) may adjust its renewable energy procurement targets to ensure that the procurement of additional electricity from eligible renewable energy resources, in combination with the procurement of electricity from unavoidable long-term contracts and ownership agreements, does not exceed the total retail sales of the local publicly owned electric utility during that compliance period. The local publicly owned electric utility may limit its procurement of eligible renewable energy resources for that compliance period to no less than an average of 33 percent of its retail sales.

(3) The Energy Commission shall approve any reductions in procurement targets proposed by a local publicly owned electric utility if it determines that the requirements of this subdivision are satisfied.

~~(m)~~

~~(k)~~ A local publicly owned electric utility shall retain discretion over both of the following:

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

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

~~(n)~~

~~(l)~~ The Energy Commission shall adopt regulations specifying procedures for enforcement of this article. The regulations shall include a public process under which the Energy Commission may issue a notice of violation and correction against a local publicly owned electric utility for failure to comply with this article, and for referral of violations to the State Air Resources Board for penalties pursuant to subdivision ~~(e)~~ ~~(m)~~.

~~(o)~~

~~(m)~~ (1) Upon a determination by the Energy Commission that a local publicly owned electric utility has failed to comply with this article, the Energy Commission shall refer the failure to comply with this article to the State Air Resources Board, which may impose penalties to enforce this article consistent with Part 6 (commencing with Section 38580) of Division 25.5 of the Health and Safety Code. Any penalties imposed shall be comparable to those adopted by the commission for noncompliance by retail sellers.

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