

AMENDED IN ASSEMBLY JULY 17, 2007

AMENDED IN SENATE APRIL 18, 2007

SENATE BILL

No. 411

Introduced by Senators Simitian and Perata
(Principal coauthor: Assembly Member Levine)

February 21, 2007

An act to amend Section 399.15 of the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 411, as amended, Simitian. Energy: renewable energy resources. 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, as defined, of electricity, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard). The renewables portfolio standard requires each retail seller to increase its total procurement of eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010. Existing law prohibits the CPUC from requiring a retail seller with 20% of retail sales procured from eligible renewable energy resources in any year to increase its procurement of renewable energy resources in the following year.

~~The existing California Global Warming Solutions Act of 2006 requires the State Air Resources Board to adopt regulations to require the reporting and verification of emissions of greenhouse gases and to monitor and enforce compliance with the reporting and verification program, and requires 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.~~

This bill would require a retail seller, *subject to certain conditions*, to increase its total procurement of eligible renewable energy resources so that at least 33% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2020, ~~in furtherance of achieving the greenhouse gas emissions limit adopted pursuant to the California Global Warming Solutions Act of 2006.~~

This bill would incorporate additional changes to Section 399.15 of the Public Utilities Code proposed by SB 1036, to be operative only if SB 1036 and this bill are enacted, both bills amend this section, and this bill is enacted after SB 1036.

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

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

1 SECTION 1. Section 399.15 of the Public Utilities Code is
2 amended to read:
3 399.15. (a) In order to fulfill unmet long-term resource needs,
4 the commission shall establish a renewables portfolio standard
5 requiring all electrical corporations to procure a minimum quantity
6 of electricity generated by eligible renewable energy resources as
7 a specified percentage of total kilowatthours sold to their retail
8 end-use customers each calendar year, if sufficient funds are made
9 available pursuant to Section 399.6 and Chapter 8.6 (commencing
10 with Section 25740) of Division 15 of the Public Resources Code,
11 to cover the above-market costs of eligible renewable energy
12 resources.
13 (b) The commission shall implement annual procurement targets
14 for each retail seller as follows:
15 (1) Each retail seller shall, pursuant to subdivision (a), increase
16 its total procurement of eligible renewable energy resources by at
17 least an additional 1 percent of retail sales per year so that 20
18 percent of its retail sales are procured from eligible renewable

1 energy resources no later than December 31, 2010, and at least 33
2 percent of its retail sales are procured from eligible renewable
3 energy resources no later than December 31, 2020, in furtherance
4 of achieving the greenhouse gas emissions reductions required
5 pursuant to Part 3 (commencing with Section 38550) of Division
6 25.5 of the Health and Safety Code.

7 (2) (A) *Subject to the ratepayer protections provided pursuant*
8 *to this article and subparagraph (B), each retail seller shall*
9 *increase its total procurement of eligible renewable energy*
10 *resources so that at least 33 percent of its retail sales are procured*
11 *from eligible renewable energy resources no later than December*
12 *31, 2020.*

13 (B) *If supplemental energy payments provided pursuant to*
14 *Chapter 8.6 (commencing with Section 25740) of Division 15 of*
15 *the Public Resources Code, in combination with the market prices*
16 *approved by the commission, are insufficient to cover any*
17 *above-market costs of electricity procured from eligible renewable*
18 *energy resources through an electricity purchase agreement of at*
19 *least 10 years' duration, the commission shall allow a retail seller*
20 *to limit its annual procurement obligation to the quantity of eligible*
21 *renewable energy resources that can be procured with available*
22 *supplemental energy payments. A retail seller shall not be required*
23 *to enter into long-term contracts with operators of eligible*
24 *renewable energy resources that exceed the market prices*
25 *established pursuant to subdivision (c).*

26 (C) *For purposes of implementing this paragraph, the*
27 *commission may authorize a retail seller to procure less than one*
28 *additional percent per year of eligible renewable energy resources,*
29 *if the commission determines that the retail seller is making*
30 *reasonable and feasible progress towards meeting the 33 percent*
31 *procurement requirement and remains on course to meet that*
32 *requirement.*

33 ~~(2)~~

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

39 ~~(3)~~

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

6 ~~(4)~~

7 (5) In the event that a retail seller fails to procure sufficient
8 eligible renewable energy resources in a given year to meet any
9 annual target established pursuant to this subdivision, the retail
10 seller shall procure additional eligible renewable energy resources
11 in subsequent years to compensate for the shortfall if sufficient
12 funds are made available pursuant to Section 399.6 and Chapter
13 8.6 (commencing with Section 25740) of Division 15 of the Public
14 Resources Code, to cover any above-market costs of eligible
15 renewable energy resources.

16 ~~(5)~~

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

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

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

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

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

1 (d) The Energy Commission shall provide supplemental energy
2 payments from funds in the New Renewable Resources Account
3 of the Renewable Resource Trust Fund to eligible renewable energy
4 resources pursuant to Chapter 8.6 (commencing with Section
5 25740) of Division 15 of the Public Resources Code, consistent
6 with this article, for any above-market costs. Indirect costs
7 associated with the purchase of eligible renewable energy resources
8 by an electrical corporation, including imbalance energy charges,
9 sale of excess energy, decreased generation from existing resources,
10 or transmission upgrades, shall not be eligible for supplemental
11 energy payments, but are recoverable in rates, as authorized by
12 the commission. The Energy Commission shall not award
13 supplemental energy payments to service load that is not subject
14 to the renewable energy public goods charge.

15 (e) The establishment of a renewables portfolio standard shall
16 not constitute implementation by the commission of the federal
17 Public Utility Regulatory Policies Act of 1978 (Public Law
18 95-617).

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

22 *SEC. 2. Section 399.15 of the Public Utilities Code is amended*
23 *to read:*

24 399.15. (a) In order to fulfill unmet long-term resource needs,
25 the commission shall establish a renewables portfolio standard
26 requiring all electrical corporations to procure a minimum quantity
27 of electricity generated by eligible renewable energy resources as
28 a specified percentage of total kilowatthours sold to their retail
29 end-use customers each calendar year, ~~if sufficient funds are made~~
30 ~~available pursuant to Section 399.6 and Chapter 8.6 (commencing~~
31 ~~with Section 25740) of Division 15 of the Public Resources Code,~~
32 ~~to cover the above-market costs of eligible renewable energy~~
33 ~~resources subject to limits on the total amount of costs expended~~
34 ~~above the market prices determined in subdivision (c), to achieve~~
35 ~~the targets established under this article.~~

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

38 (1) Each retail seller shall, pursuant to subdivision (a), increase
39 its total procurement of eligible renewable energy resources by at
40 least an additional 1 percent of retail sales per year so that 20

1 percent of its retail sales are procured from eligible renewable
2 energy resources no later than December 31, 2010. ~~A retail seller~~
3 ~~with 20 percent of retail sales procured from eligible renewable~~
4 ~~energy resources in any year shall not be required to increase its~~
5 ~~procurement of renewable energy resources in the following year.~~

6 (2) (A) *Subject to the ratepayer protections provided pursuant*
7 *to this article, each retail seller shall increase its total procurement*
8 *of eligible renewable energy resources so that at least 33 percent*
9 *of its retail sales are procured from eligible renewable energy*
10 *resources no later than December 31, 2020.*

11 (B) *For purposes of implementing this paragraph, the*
12 *commission may authorize a retail seller to procure less than one*
13 *additional percent per year of eligible renewable energy resources,*
14 *if the commission determines that the retail seller is making*
15 *reasonable and feasible progress towards meeting the 33 percent*
16 *procurement requirement and remains on course to meet that*
17 *requirement.*

18 ~~(2)~~

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

24 ~~(3)~~

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

30 ~~(4)~~

31 (5) In the event that a retail seller fails to procure sufficient
32 eligible renewable energy resources in a given year to meet any
33 annual target established pursuant to this subdivision, the retail
34 seller shall procure additional eligible renewable energy resources
35 in subsequent years to compensate for the shortfall ~~if sufficient~~
36 ~~funds are made available pursuant to Section 399.6 and Chapter~~
37 ~~8.6 (commencing with Section 25740) of Division 15 of the Public~~
38 ~~Resources Code, to cover any above-market costs of eligible~~
39 ~~renewable energy resources, subject to the limitation on costs for~~
40 *electrical corporations established pursuant to subdivision (d).*

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

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

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

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

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

25 ~~(d) The Energy Commission shall provide supplemental energy~~
26 ~~payments from funds in the New Renewable Resources Account~~
27 ~~of the Renewable Resource Trust Fund to eligible renewable energy~~
28 ~~resources pursuant to Chapter 8.6 (commencing with Section~~
29 ~~25740) of Division 15 of the Public Resources Code, consistent~~
30 ~~with this article, for any above-market costs. Indirect costs~~
31 ~~associated with the purchase of eligible renewable energy resources~~
32 ~~by an electrical corporation, including imbalance energy charges,~~
33 ~~sale of excess energy, decreased generation from existing resources,~~
34 ~~or transmission upgrades, shall not be eligible for supplemental~~
35 ~~energy payments, but are recoverable in rates, as authorized by~~
36 ~~the commission. The Energy Commission shall not award~~
37 ~~supplemental energy payments to service load that is not subject~~
38 ~~to the renewable energy public goods charge.~~

39 *(d) The commission shall establish, for each electrical*
40 *corporation, a limitation on the total costs expended above the*

1 market prices determined in subdivision (c) for the procurement
2 of eligible renewable energy resources to achieve the annual
3 procurement targets established under this article.

4 (1) The cost limitation shall be equal to the amount of funds
5 transferred to each electrical corporation by the Energy
6 Commission pursuant to subdivision (b) of Section 25743 of the
7 Public Resources Code and the 51.5 percent of the funds which
8 would have been collected through January 1, 2012, from the
9 customers of the electrical corporation based on the renewable
10 energy public goods charge in effect as of January 1, 2007.

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

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

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

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

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

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

26 (3) If the cost limitation for an electrical corporation is
27 insufficient to support the total costs expended above the market
28 prices determined in subdivision (c) for the procurement of eligible
29 renewable energy resources satisfying the conditions of paragraph
30 (2), the commission shall allow the electrical corporation to limit
31 its procurement to the quantity of eligible renewable energy
32 resources that can be procured at or below the market prices
33 established in subdivision (c).

34 (4) Nothing in this section prevents an electrical corporation
35 from voluntarily proposing to procure eligible renewable energy
36 resources at above-market prices that are not counted toward the
37 cost limitation. Any voluntary procurement involving above-market
38 costs shall be subject to commission approval prior to the expense
39 being recovered in rates.

1 (e) The establishment of a renewables portfolio standard shall
2 not constitute implementation by the commission of the federal
3 Public Utility Regulatory Policies Act of 1978 (Public Law
4 95-617).

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

8 *SEC. 3. This act does not affect the powers and duties*
9 *established in the California Emergency Services Act (Chapter 7*
10 *(commencing with Section 8550) of Division 1 of Title 2 of the*
11 *Government Code).*

12 *SEC. 4. Section 2 of this bill incorporates amendments to*
13 *Section 399.15 of the Public Utilities Code proposed by both this*
14 *bill and SB 1036. It shall only become operative if (1) both bills*
15 *are enacted and become effective on or before January 1, 2008,*
16 *(2) each bill amends Section 399.15 of the Public Utilities Code,*
17 *and (3) this bill is enacted after SB 1036, in which case Section 1*
18 *of this bill shall not become operative.*