

Assembly Bill No. 21

Passed the Assembly September 12, 2009

Chief Clerk of the Assembly

Passed the Senate September 12, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 399.12 of, and repeal and add Section 399.15 of the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 21, Krekorian. Renewable energy resources.

Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations, as defined. The Public Utilities Act imposes various duties and responsibilities on the PUC with respect to the purchase of electricity and requires the PUC to review and approve a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program (RPS program). The RPS program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, 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. The RPS program requires the PUC to implement annual procurement targets for each retail seller to increase its total procurement of electricity generated by eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales of electricity are procured from eligible renewable energy resources no later than December 31, 2010. Existing law requires the PUC to make a determination of the existing market cost for electricity, which PUC decisions call the market price referent, and to limit an electrical corporation's obligation to procure electricity from eligible renewable energy resources, that exceeds the market price referent, by a specified amount.

This bill would instead require the PUC to require that a retail seller procure the following percentages of electricity from eligible renewable energy resources by the following dates: (A) Until December 31, 2012, the same percentage as actually achieved by the retail seller during 2009; (B) 20% by December 31, 2013; (C) 25% by December 31, 2016; and (D) 33% by December 31, 2020.

The bill would authorize the PUC to permit a retail seller to delay compliance with (B) or (C) procurement levels when specified circumstances are present, but would not authorize the PUC to permit a retail seller to delay compliance with the (D) procurement level. The bill would delete the existing market price referent provisions and instead require the PUC to establish a methodology to determine the market price of electricity for terms corresponding to the length of contracts with eligible renewable energy resources, in consideration of, and reflecting, certain matters. The bill would require the PUC to establish a limitation on the annual expenditures made above the market price, by an electrical corporation, in order to achieve the procurement levels established by the PUC. The bill would require the PUC to permit an electrical corporation to limit its procurement of electricity from eligible renewable energy resources to that quantity that can be procured at or below the market prices established by the PUC, up to the limitation. The bill would delete an existing requirement that the PUC adopt flexible rules for compliance for retail sellers. The bill would revise the definitions of certain terms for purposes of the RPS program.

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

Because the provisions of this bill are within the act and require action by the PUC to implement its requirements, a violation of these provisions would impose a state-mandated local program by expanding the definition of a 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.

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

SECTION 1. 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) (1) “Delivered” and “delivery,” with respect to electricity, means that the electricity is used to serve end-use retail customers or energy storage facilities located within the state, and meets either of the following conditions:

(A) The electricity is generated at a location within the state.

(B) The electricity is generated at a location outside the state and scheduled for consumption by California end-use retail customers or energy storage facilities located within the state. Compliance with this requirement is demonstrated by one of the following means:

(i) Showing that the generator’s first point of interconnection is with facilities of a Transmission Service Provider, as that term is defined by North American Electric Reliability Corporation primarily located in this state.

(ii) Showing that the 24-hour metered output of the generator matches the import schedules of electricity flow from the generator, through the balancing authority area in which the generator is located, through any intermediate balancing authorities, to the balancing authority area of the end-use retail customers or energy storage facility located in this state.

(2) Notwithstanding clause (ii) of subparagraph (B) of paragraph (1), electricity is not delivered to the extent that either of the following occurs:

(A) The physical delivery of electricity is scheduled from a source other than a renewable electrical generation facility, as defined in Section 27541 of the Public Resources Code.

(B) The electricity output is scheduled for delivery to customers in a different 24-hour period from the time of generation by the renewable electrical generation facility.

(3) Consistent with subparagraph (A) of paragraph (2), the physical delivery of electricity from a renewable electrical generation facility may be accompanied by electricity provided by another source for purposes of facilitating scheduling. For purposes of this article, only the portion of electricity provided directly from the renewable electrical generation facility shall

count toward meeting the renewables portfolio standard procurement requirements of this article.

(4) For purposes of determining compliance by an intermittent resource located outside California with the delivery requirements of this subdivision, any positive imbalance energy provided under applicable tariffs by the balancing authority in which the facility is located shall, in an amount not exceeding any negative imbalance energy provided by the intermittent resource, be included in the 24-hour metered output and considered generated by the eligible renewable energy resource.

(c) “Eligible renewable energy resource” means an 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:

(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 owned or procured the electricity from the facility as of December 31, 2005. 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 serving the jurisdiction of a local publicly owned electric utility is an eligible renewable energy resource if the local publicly owned electric utility 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 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.

(2) 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.

(d) “Procure” means to acquire through ownership or contract. For purposes of meeting the renewables portfolio standard procurement requirements, a retail seller or local publicly owned electric utility may procure either delivered electricity generated by an eligible renewable energy resource or renewable energy credits associated with electricity generated, but not necessarily delivered by, an eligible renewable energy resource. 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 or the obligation of a local publicly owned electric utility to meet its renewables portfolio standard implemented pursuant to Section 399.30.

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

(B) No electricity generated by a small hydroelectric generation facility shall result in the creation of a renewable energy credit unless the facility meets the requirements of subparagraph (A) of paragraph (1) of subdivision (c).

(C) No electricity generated by a conduit hydroelectric generation facility shall result in the creation of a renewable energy credit unless the facility meets the requirements of subparagraph (B) of paragraph (1) of subdivision (c).

(D) No electricity generated by a facility engaged in the combustion of municipal solid waste shall result in the creation of a renewable energy credit unless the facility meets the requirements of paragraph (2) of subdivision (c).

(f) “Renewable energy public goods charge” means that portion of the nonbypassable system benefits charge required to be collected to fund renewable energy pursuant to the Reliable Electric Service Investments Act (Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1, for an electrical corporation, and pursuant to Section 385 for a local publicly owned electric utility.

(g) “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.

(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. 2. Section 399.15 of the Public Utilities Code is repealed.

SEC. 3. Section 399.15 is added to the Public Utilities Code, to read:

399.15. (a) In order to fulfill unmet long-term resource needs, the commission shall establish a renewables portfolio standard requiring all retail sellers 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 compliance period to achieve the targets established under this article.

(b) The commission shall implement renewables portfolio standard procurement requirements only as follows:

(1) Each retail seller shall procure the following minimum percentages of eligible renewable energy resources in the following years, and continue to procure at least those percentages in subsequent years:

(A) Until December 31, 2012, the same percentage as actually achieved by the retail seller during 2009.

(B) Twenty percent by December 31, 2013.

(C) Twenty-five percent by December 31, 2016.

(D) Thirty-three percent by December 31, 2020.

(2) A retail seller with 33 percent of its retail sales of electricity procured from eligible renewable energy resources in any year shall not be required to increase its procurement of renewable energy resources, except to the extent required to maintain a 33 percent renewables portfolio standard. A retail seller may voluntarily increase its procurement of eligible renewable energy resources beyond the renewables portfolio standard procurement requirements.

(3) Only for purposes of establishing the renewables portfolio standard procurement requirements of paragraph (1), 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) The commission may only allow a retail seller for a maximum of two years per request to delay compliance with a renewables portfolio standard procurement requirement established pursuant to subparagraph (B) or (C) of paragraph (1), if it finds that the retail seller has demonstrated that either of the following conditions will prevent timely compliance:

(A) There is inadequate transmission capacity to allow for sufficient electricity to be delivered from proposed eligible renewable energy resource projects using the current operational protocols of the Independent System Operator (ISO). The commission shall consult with the ISO in making its findings relative to the existence of this condition. In making its findings relative to the existence of this condition with respect to a retail seller that owns transmission lines, the commission shall consider both of the following:

(i) Whether the retail seller has undertaken all reasonable measures to develop and construct new transmission lines or upgrades to existing lines in a timely fashion.

(ii) Whether the retail seller has taken all reasonable operational measures, as verified by the ISO, to maximize deliveries of electricity from eligible renewable energy resources in advance of transmission availability.

(B) Unanticipated permitting, interconnection, or other delays for procured eligible renewable energy resource projects, or there is an insufficient supply of delivered electricity from eligible renewable energy resources available to the retail seller. In making this finding, the commission shall consider whether the retail seller has prudently managed portfolio risks, relied on sufficient viable projects, sought to develop its own eligible renewable energy resources, and procured an appropriate minimum margin of procurement above the minimum procurement level necessary to comply with the renewables portfolio standard to compensate for foreseeable delays or insufficient supply.

(5) Prior to granting a delay pursuant to paragraph (4), the commission shall require a retail seller to demonstrate that it has presented evidence that it has made material progress in reducing its compliance deficit and has taken all reasonable measures consistent with this article to procure cost-effective distributed generation and renewable energy credits consistent with the restrictions in paragraph (6) of subdivision (a) of Section 399.21.

(6) The commission may not approve any request to delay a compliance obligation for which it has already granted a delay unless a retail seller presents evidence that it has made material progress in reducing its compliance deficiency and has identified and taken all reasonable actions under its control to pursue additional options to comply with the delayed interim procurement obligation and remove impediments that are related to its delay.

(7) The commission may not authorize any delay in achieving the 33 percent by December 31, 2020, renewables portfolio standard procurement requirement of subparagraph (D) of paragraph (1).

(8) If a retail seller fails to procure sufficient eligible renewable energy resources to comply with a renewables portfolio standard procurement requirement and fails to obtain an order from the commission authorizing a compliance delay pursuant to paragraph (4), the commission shall exercise its authority pursuant to Section 2113.

(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 long-term ownership, operating, and fixed-price fuel costs associated with fixed-price electricity from new generating facilities. The methodology shall reflect all of the following:

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

(2) All current and anticipated environmental compliance costs, including mitigation of emissions of greenhouse gases and air pollution offsets associated with the operation of new generating facilities.

(d) (1) The commission shall establish a limitation for each electrical corporation on the expenditures above the market costs determined in subdivision (c) for the procurement of all eligible renewable energy resources that are used to comply with the electrical corporation's renewables portfolio standard. The cost limitation shall equal 6 percent of the total bundled electric revenues recorded by the electrical corporation in 2008 multiplied by the number of years remaining until 2020. Total bundled electric revenues shall include revenues collected by the electrical corporation on behalf of the Department of Water Resources for

procurement activities conducted pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(2) The calculation of the above-market costs shall include all procurement of eligible renewable energy resources that are used to comply with the electrical corporation's renewables portfolio standard that are submitted for approval to the commission after January 1, 2010.

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

(4) Calculations of the above-market costs shall include, as a reduction to the total above-market costs, procurement from eligible renewable energy resources that are used to meet the renewables portfolio standard procurement requirements established pursuant to paragraph (1) of subdivision (b) that are below the market prices determined in subdivision (c) for each year.

(5) In calculating the limit on above-market costs established in paragraph (1), the commission shall account for the potential that some procured resources may be delayed or canceled.

(e) If the cost limitation for an electrical corporation is insufficient to support the projected net above-market costs identified in subdivision (d), the commission shall allow the electrical corporation to refrain from entering into new contracts or to construct facilities for that future year beyond the quantity of eligible renewable energy resources that can be procured at or below the market prices established in subdivision (c).

(f) Notwithstanding subdivision (e), if an electrical corporation's net annual above-market costs for a future year exceed the electrical corporation's cost limitation, the electrical corporation may voluntarily propose to procure eligible renewable energy resources at above-market prices. Any voluntary procurement under this paragraph shall be subject to commission approval prior to the expense being recovered in rates.

(g) (1) The commission shall monitor the status of the cost limitation for each electrical corporation in order to ensure compliance with this article.

(2) If the commission determines that an electrical corporation may exceed its cost limitation prior to achieving the renewables

portfolio standard procurement requirements, the commission shall do all of the following within 60 days of making that determination:

(A) Investigate and identify the reasons why the electrical corporation may exceed its annual cost limitation.

(B) Identify those actions that can be taken to ensure that the electrical corporation continues to comply with its renewables portfolio standard procurement requirements.

(C) Notify the appropriate policy and fiscal committees of the Legislature that the electrical corporation may exceed its cost limitation, the reasons why the electrical corporation may exceed its cost limitation, and those actions that may be taken by the electrical corporation to comply with the renewables portfolio standard procurement requirements.

(3) The commission shall examine mechanisms for mitigating the potential impact of low fossil fuel prices on the cost limitation of each electrical corporation and make recommendations to the Legislature on any changes in law it identifies to mitigate those impacts.

(h) The commission shall examine and adopt mechanisms to limit the potential influence of the market prices established in subdivision (c) on seller pricing and buyer contract selection.

(i) 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).

(j) The commission shall consult with the Energy Commission in establishing renewables portfolio standard policies.

SEC. 4. 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. 5. This bill shall only become operative if this bill, Assembly Bill 64, and Senate Bill 14 are all enacted and become effective on or before January 1, 2010.

Approved _____, 2009

Governor