

AMENDED IN SENATE JULY 15, 2009

AMENDED IN SENATE JUNE 25, 2009

AMENDED IN ASSEMBLY MAY 6, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1106

Introduced by Assembly Members Fuentes and Ruskin

February 27, 2009

An act to amend Section 399.20 of, and to add Section 399.21 to, the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1106, as amended, Fuentes. Renewable electric generation facilities: feed-in tariffs.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined. The Public Utilities Act imposes various duties and responsibilities on the commission with respect to the purchase of electricity by electrical corporations and requires the commission to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program (RPS program). The RPS program requires that a retail seller of electricity, including electrical corporations, 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 requires every electrical corporation to file with the commission a standard tariff for electricity generated by an electric generation facility, as defined, that is owned and operated by a retail customer of the electrical corporation. Existing law requires that the electric generation facility: (1) have an effective capacity of not more than 1.5 megawatts and be located on property owned or under the control of the customer, (2) be interconnected and operate in parallel with the electric transmission and distribution grid, (3) be strategically located and interconnected to the electric transmission system in a manner that optimizes the deliverability of electricity generated at the facility to load centers, and (4) meet the definition of an eligible renewable energy resource under the RPS program. Existing law requires that the tariff provide for payment for every kilowatthour of electricity generated by an electric generation facility at a market price referent established by the commission pursuant to the program. Existing law requires the electrical corporation to make this tariff available to customers that own and operate an electric generation facility within the service territory of the electrical corporation, upon request, on a first-come-first-served basis, until the combined statewide cumulative rated generating capacity of those electric generation facilities equals 500 megawatts, or the electrical corporation meets its proportionate share of the 500 megawatt limit based upon the ratio of its peak demand to total statewide peak demand of all electrical corporations. Existing law authorizes the commission to modify or adjust the above-described requirements for any electrical corporation with less than 100,000 service connections, as individual circumstances merit. Existing law provides that the electricity generated by an electric generation facility counts toward the electrical corporation's renewables portfolio standard and provides that the physical generating capacity counts toward meeting the electrical corporation's resource adequacy requirements. Existing decisions of the commission refer to this tariff as a feed-in tariff.

This bill would make the existing feed-in tariff statute applicable to an electric generation facility that interconnects to the grid and commences initial operation on or before June 30, 2011. The bill would require an electrical corporation with 100,000 or more service connections to develop, and upon approval by the commission, implement a standard-offer contract and feed-in tariff, as defined, that requires payment for every kilowatthour of electricity delivered to the grid generated by a tariff-eligible generation facility, as defined. The bill would require that an electrical corporation obtain commission

approval of the standard-offer contract and feed-in tariff by June 1, 2011, and to implement the contract and tariff by July 1, 2011. The bill would have different requirements for two separate tiers, as specified, of tariff-eligible generation facilities. For a tier one tariff-eligible generation facility with a nameplate capacity of not more than 5 megawatts, the price paid by the electrical corporation for electricity delivered to the grid would be based on the reasonable cost of production for ~~specified technologies~~ *each eligible renewable energy resource technology* as determined by the commission, plus a reasonable profit commensurate to that authorized by the commission for the electrical corporation. For a tier 2 tariff-eligible generation facility with a nameplate capacity of more than 5 megawatts and not more than 10 megawatts, the price to be paid by the electrical corporation for electricity delivered to the grid would be the total benefit of the electricity to ratepayers as determined by the commission. The bill would require the commission to establish the price to reflect the value of every kilowatthour of electricity generated on a time-of-delivery basis and any other attributes of renewable generation. The bill would require an electrical corporation to make the standard-offer contract and feed-in tariff available to the owner or operator of a tariff-eligible generation facility upon request. ~~The bill would require the commission to establish performance standards for tier 2 tariff-eligible generation facilities to ensure that the facilities are constructed, operated, and maintained to generate the expected annual net production of electricity and do not impact system reliability.~~ The bill would authorize the commission to modify these requirements for an electrical corporation with less than 100,000 service connections in the state based upon the individual circumstances of that electrical corporation. The bill would provide that the electricity generated by a tariff-eligible generation facility counts toward the electrical corporation's renewables portfolio standard and that the purchase of electricity includes the purchase of all renewable and environmental attributes associated with the production of electricity by the tariff-eligible generation facility.

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.

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

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

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

3 399.20. (a) It is the policy of this state and the intent of the
4 Legislature to encourage energy production from renewable energy
5 resources.

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

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

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

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

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

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

23 (d) The tariff shall provide for payment for every kilowatthour
24 of electricity generated by an electric generation facility at the
25 market price as determined by the commission pursuant to Section
26 399.15 for a period of 10, 15, or 20 years, as authorized by the
27 commission.

28 (e) Every electrical corporation shall make this tariff available
29 to customers that own and operate an electric generation facility
30 within the service territory of the electrical corporation, upon

1 request, on a first-come-first-served basis, until the combined
2 statewide cumulative rated generating capacity of those electric
3 generation facilities equals 500 megawatts. An electrical
4 corporation may make the terms of the tariff available to customers
5 in the form of a standard contract subject to commission approval.
6 Each electrical corporation shall only be required to offer service
7 or contracts under this section until that electrical corporation
8 meets its proportionate share of the 500 megawatts based on the
9 ratio of its peak demand to the total statewide peak demand of all
10 electrical corporations.

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

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

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

21 (i) The commission shall only enforce the requirements of this
22 section with respect to an electric generation facility that
23 interconnects to the grid and commences initial operation on or
24 before June 30, 2011, and shall continue to enforce the
25 requirements of this section until the 10-, 15-, or 20-year term of
26 the tariff is completed. Upon completion of the 10-, 15-, or 20-year
27 term of the tariff pursuant to this section, an electric generation
28 facility that is a tariff-eligible generation facility pursuant to
29 Section 399.21, may receive service pursuant to that section. The
30 commission shall enforce the requirements of Section 399.21 with
31 respect to an electric generation facility that is a tariff-eligible
32 generation facility that interconnects to the grid or commences
33 initial operation on or after July 1, 2011.

34 SEC. 2. Section 399.21 is added to the Public Utilities Code,
35 to read:

36 399.21. (a) For purposes of this section, the following terms
37 have the following meanings:

38 (1) ~~“Alternative net metering program” means any program that~~
39 ~~requires an electrical corporation to purchase or credit electricity~~

1 ~~generated by a subscriber pursuant to Article 3 (commencing with~~
2 ~~Section 2821) of Chapter 7 of Part 2.~~

3 ~~(2)~~

4 (1) “Feed-in tariff” means a schedule detailing the rates, rules,
5 and terms of service that is filed by an electrical corporation and
6 approved by the commission that governs the electrical
7 corporation’s purchase of electricity delivered to the grid that is
8 generated by a tariff-eligible generation facility.

9 ~~(3)~~

10 (2) “Tariff-eligible generation facility” means a facility for the
11 generation of electricity that meets all of the following criteria:

12 (A) Has a nameplate capacity that falls within either of the
13 following two tiers:

14 (i) Tier one has a nameplate capacity of not more than 5
15 megawatts.

16 (ii) Tier two has a nameplate capacity of more than 5 megawatts
17 and not more than 10 megawatts.

18 (B) Is an eligible renewable energy resource.

19 (C) Is interconnected to the electrical corporation’s transmission
20 or distribution grid and meets the requirements for parallel
21 operation established by the commission for distributed generation.
22 This subparagraph does not limit the ability of a tariff-eligible
23 generation facility to interconnect to the transmission grid pursuant
24 to the Small Generator Interconnection Protocol of the Independent
25 System Operator and approved by the Federal Energy Regulatory
26 Commission.

27 (D) Is located within the service territory of the electrical
28 corporation.

29 (E) *Will not adversely affect the safety or reliability of the*
30 *distribution grid, as determined by the electrical corporation.*

31 (F) *Meets performance standards, established by the*
32 *commission, to ensure that the facilities are constructed, operated,*
33 *and maintained to generate the expected annual net production*
34 *of electricity and do not impact system reliability.*

35 (b) On or before July 1, 2011, the commission shall implement
36 the requirements of this section for each electrical corporation with
37 100,000 or more service connections in the state. The commission
38 may modify the requirements of this section for an electrical
39 corporation with less than 100,000 service connections in the state

1 based upon the individual circumstances of that electrical
2 corporation.

3 (c) (1) An electrical corporation shall develop and, upon
4 approval by the commission, implement a standard-offer contract
5 and a feed-in tariff that requires payment for every kilowatthour
6 of electricity generated and delivered to the grid by a tier one or
7 tier two tariff-eligible generation facility pursuant to the
8 requirements of this section.

9 (2) The commission shall approve the standard-offer contract
10 and feed-in tariff at rates and upon those terms that the commission
11 determines are reasonable, subject to the requirements of
12 subdivision (d) for a tier one tariff-eligible generation facility and
13 subdivision (e) for a tier two tariff-eligible generation facility.

14 (3) An electrical corporation shall obtain commission approval
15 of a standard-offer contract and feed-in tariff by June 1, 2011, and
16 the standard-offer contract and feed-in tariff shall be implemented
17 by July 1, 2011.

18 (d) (1) For tier one tariff-eligible generation facilities, separate
19 tariff prices shall be established for each ~~of the following~~
20 ~~technologies:~~

- 21 ~~(A) Thin-film solar photovoltaic.~~
- 22 ~~(B) Solar photovoltaic technologies other than thin-film solar~~
23 ~~photovoltaics.~~
- 24 ~~(C) Solar thermal electric.~~
- 25 ~~(D) Wind.~~
- 26 ~~(E) Biogas, digester gas, and landfill gas.~~
- 27 ~~(F) Biomass and municipal solid waste conversion.~~
- 28 ~~(G) Geothermal.~~
- 29 ~~(H) Small hydroelectric.~~
- 30 ~~(I) Any additional technology that the commission determines~~

31 ~~is an eligible renewable energy resource and that holds promise~~
32 ~~to contribute toward meeting the renewables portfolio standard~~
33 ~~procurement requirements. eligible renewable energy resource.~~

34 (2) The feed-in tariff and standard-offer contract for a tier one
35 tariff-eligible generation facility shall include both of the following:

36 (A) A price to be paid by the electrical corporation for electricity
37 delivered to the grid for each ~~technology specified in paragraph~~
38 ~~(3) of subdivision (e) eligible renewable energy resource~~
39 ~~technology~~, that is based on the reasonable cost of production for
40 that technology, as determined by the commission, plus a

1 reasonable profit commensurate to that authorized by the
2 commission as a reasonable rate of return for the electrical
3 corporation. On or before January 1, 2011, and by January 1 of
4 each odd-numbered year thereafter, the commission shall separately
5 determine the reasonable cost to generate electricity from a tier
6 one tariff-eligible generation facility for each technology specified
7 in paragraph (1). In determining the reasonable cost of production
8 for each technology, the commission shall consider the availability
9 of federal and state credits or incentives. The maximum price paid
10 by an electrical corporation pursuant to this paragraph shall not
11 exceed thirty ~~dollars (\$30)~~ cents (\$0.30) per kilowatthour or _____
12 percent above the average cost of electricity generated by eligible
13 renewable energy resources, whichever is lower.

14 (B) A contract term and fixed purchase price of a duration of
15 not less than 25 years. The purchase price shall not, during the
16 term of the contract, be subject to adjustment pursuant to paragraph
17 (3).

18 (3) The price to be paid by the electrical corporation for
19 electricity delivered to the grid pursuant to the standard-offer
20 contract and feed-in tariff shall be reviewed and, if needed,
21 prospectively adjusted downward on a biennial basis to reflect
22 changing costs of production as determined by the commission.
23 The adjusted purchase price is applicable to a tier one tariff-eligible
24 generation facility that interconnects to the grid or commences
25 initial operation subsequent to the operative date of the revised
26 feed-in tariff.

27 (4) An electrical corporation shall make the standard-offer
28 contract and feed-in tariff available to the owner or operator of a
29 tier one tariff-eligible generation facility upon request.

30 ~~(5) The owner or operator of a tier one tariff-eligible generation~~
31 ~~facility may elect to instead receive service pursuant to an~~
32 ~~alternative net metering program.~~

33 (e) (1) The feed-in tariff and standard-offer contract for a tier
34 two tariff-eligible generation facility shall include both of the
35 following:

36 (A) A price to be paid by the electrical corporation for electricity
37 delivered to the grid that is the total benefit of the electricity to
38 ratepayers. The commission shall establish the price to reflect the
39 value of every kilowatthour of electricity generated on a

1 time-of-delivery basis and any other attributes of renewable
2 generation.

3 (B) A contract term and fixed purchase price for a period of 10,
4 15, and 20 years, at the option of the owner or developer of the
5 tier two tariff-eligible generation facility. The purchase price shall
6 not, during the term of the contract, be subject to adjustment
7 pursuant to paragraph (2).

8 (2) The price to be paid by the electrical corporation for
9 electricity delivered to the grid pursuant to the standard-offer
10 contract and feed-in tariff shall be reviewed and, if needed,
11 prospectively adjusted downward on a biennial basis. The adjusted
12 purchase price is applicable to a tier two tariff-eligible generation
13 facility that interconnects to the grid or commences initial operation
14 subsequent to the operative date of the revised feed-in tariff.

15 (3) An electrical corporation shall make the standard-offer
16 contract and feed-in tariff available to the owner or operator of a
17 tier two tariff-eligible generation facility upon request.

18 ~~(4) An owner or operator of a tier two tariff-eligible generation~~
19 ~~facility that elects to receive electrical service pursuant to the~~
20 ~~feed-in tariff or standard-offer contract filed by an electrical~~
21 ~~corporation waives any right that they may have as a customer of~~
22 ~~the electrical corporation to thereafter receive service pursuant to~~
23 ~~an alternative net metering program.~~

24 ~~(5) The commission shall establish performance standards for~~
25 ~~tier two tariff-eligible generation facilities to ensure that the~~
26 ~~facilities are constructed, operated, and maintained to generate the~~
27 ~~expected annual net production of electricity and do not impact~~
28 ~~system reliability.~~

29 (f) Every kilowatthour of electricity generated by a tariff-eligible
30 generation facility purchased by the electrical corporation pursuant
31 to this section shall count toward the electrical corporation's
32 renewables portfolio standard annual procurement targets for
33 purposes of paragraph (1) of subdivision (b) of Section 399.15.
34 The purchase of electricity by an electrical corporation pursuant
35 to this section includes the purchase of all renewable and
36 environmental attributes associated with the production of
37 electricity by the tariff-eligible generation facility.

38 (g) Every kilowatthour of electricity generated by a tariff-eligible
39 generation facility purchased by the electrical corporation pursuant
40 to this section shall count toward any renewable energy

1 procurement requirement imposed pursuant to the California Global
2 Warming Solutions Act of 2006 (Division 25.5 (commencing with
3 Section 38500) of the Health and Safety Code).

4 (h) Expenses incurred by an electrical corporation for purchases
5 of electricity under a commission approved standard-offer contract
6 or feed-in tariff shall be fully recoverable by the electrical
7 corporation in rates.

8 (i) This section does not limit the authority of an electrical
9 corporation to enter into bilateral contracts for the purchase of
10 electricity to meet its renewables portfolio standard procurement
11 requirements pursuant to this chapter or its resource adequacy
12 requirements pursuant to Section 454.5.

13 (j) The commission shall, in consultation with the Energy
14 Commission, monitor the ongoing impacts of the feed-in tariff and
15 standard-offer contract on grid reliability and reducing transmission
16 congestion costs. The commission may reduce the upper capacity
17 limitation of any tier if the commission finds that a reduced
18 capacity limitation is necessary to maintain system reliability within
19 that electrical corporation's service territory.

20 (k) *Any owner or operator of a tariff-eligible generation facility*
21 *that enters into a standard-offer contract pursuant to this section*
22 *is not be eligible for any rebate, incentive, or credit provided by*
23 *the electrical corporation, or pursuant to any state program that*
24 *provides rebates or incentives, including the California Solar*
25 *Initiative, adopted by the commission in Decision 06-01-024, as*
26 *modified by Chapter 8.8 (commencing with Section 25780) of*
27 *Division 15 of the Public Resources Code and Article 1*
28 *(commencing with Section 2851) of Chapter 9 of Part 2, or the*
29 *self-generation incentive program authorized by Section 379.6.*

30 SEC. 3. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.

O