ASSEMBLY BILL No. 1351

Introduced by Assembly Member Blakeslee

February 27, 2009

An act to amend Sections 399.12 and 399.12.5 of the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1351, as introduced, Blakeslee. Renewable energy resources.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. The Public Utilities Act imposes various duties and responsibilities on the commission with respect to the purchase of electricity 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. The 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 existing definition of an eligible renewable energy resource includes fuel cells using renewable fuels.

This bill would recast certain portions of the definition of an eligible renewable energy resource and would include in that definition, fuel cells that are required to utilize an increasing percentage of renewable fuel, as defined, for the generation of electricity.

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

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

(c) "Eligible renewable energy resource" means an electric generating facility that ~~meets the definition of "in-state renewable electricity generation facility" in Section 25741 of the Public Resources Code, subject to the following limitations:~~ *uses biomass, solar energy, wind, geothermal, fuel cells, small hydroelectric generation of 30 megawatts or less, digester gas, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology, and that meets the location or interconnection requirements of paragraph (2) of subdivision (b) of Section 25741 of the Public Resources Code and, when applicable, the requirements for specific renewable energy sources of Section 399.12.5.*

~~(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 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 that a retail seller or local publicly owned electric utility receives delivered electricity generated by an eligible renewable energy resource that it owns or for which it has entered into an electricity purchase agreement. Nothing in this article is intended to imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling a retail seller's obligation to comply with this article or the obligation of a local publicly owned electric utility to meet its renewables portfolio standard implemented pursuant to Section ~~387 .~~ *387*.

(e) "Renewables portfolio standard" means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller is required to procure pursuant to this article or the obligation of a local publicly owned electric utility to meet its renewables portfolio standard implemented pursuant to Section ~~387 .~~ *387*.

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

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

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

(g) "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 399.12.5 of the Public Utilities Code is amended to read:

399.12.5. (a) *(1) A small hydroelectric generation facility of 30 megawatts or less that commenced operation before January 1, 2006, is an eligible renewable energy resource 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 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.*

(b) Notwithstanding paragraph (1), 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.

(b) 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)~~

(c) Notwithstanding subdivision ~~(c) of Section 399.12~~ *(a)*, 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 has, within the immediately preceding 15 years, received certification ~~from the State Water Resources Control Board~~ pursuant to Section 401 of the 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 exempt from certification because there is no potential for discharge into waters of the United States.

(3) The hydroelectric generation facility 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.

~~(e)~~

(d) 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.

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

(f) (1) An electric generating facility employing fuel cells to generate electricity is an eligible renewable energy resource if the facility uses at least the following percentage of renewable fuel:

(A) Twenty-five percent renewable fuel by 2012.

(B) Fifty percent renewable fuel by 2015.

(C) One hundred percent renewable fuel by 2018.

(2) For purposes of this subdivision, a fuel is a "renewable fuel" if it meets any of the following criteria:

(A) The fuel is derived from a biomass feedstock and is reformatted, if necessary, using energy generated by an eligible renewable energy resource.

(B) The fuel is derived from a biogas feedstock, including manure methane production, byproducts of the anaerobic digestion of biosolids and animal waste, and landfill gas, and is reformatted, if necessary, using energy generated by an eligible renewable energy resource.

(C) The fuel meets all of the following requirements:

(i) The fuel is not included in paragraph (A) or (B) and is derived from a source or feedstock that is not a fossil fuel, as defined in Section 2806, including water.

(ii) No greenhouse gases are emitted in the reformatting of the fuel.

(iii) The fuel is reformatted using electricity generated by an eligible renewable energy resource.

(3) Each unit of electricity generated by an electric generating facility employing fuel cells that use renewable fuels according to paragraph (1) shall result in the creation of a renewable energy credit.

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