

AMENDED IN SENATE JUNE 17, 2010

AMENDED IN ASSEMBLY APRIL 12, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1954

Introduced by Assembly Members Skinner and V. Manuel Pérez

February 17, 2010

An act to amend Sections 399.2.5 and 399.12 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 1954, as amended, Skinner. Electrical transmission: renewable energy resources.

Under existing law, the Public Utilities Commission (CPUC) has regulatory authority over public utilities, including electrical corporations, as defined. Existing law, the Public Utilities Act, prohibits any electrical corporation from beginning the construction of, among other things, a line, plant, or system, or of any extension thereof, without having first obtained from the CPUC a certificate that the present or future public convenience and necessity require or will require that construction (certificate of public convenience and necessity). Existing law requires the CPUC, in acting upon an application by an electrical corporation for a certificate of public convenience and necessity, to deem new transmission facilities necessary to the provision of electric service if the CPUC finds that new transmission facilities are necessary to facilitate achievement of the renewable power goals established under the renewables portfolio standard. That law additionally requires the CPUC, upon finding that new transmission facilities are necessary to facilitate achievement of the renewable power goals established under

the renewables portfolio standard, to take all feasible actions to ensure that the transmission rates established by the Federal Energy Regulatory Commission are fully reflected in any retail rates established by the commission.

This bill would provide that an application by an electrical corporation for a certificate of public convenience and necessity for new transmission facilities is necessary to the provision of electric service if the CPUC finds that new transmission facilities facilitate achievement of the renewables portfolio standard. The bill would authorize the CPUC to approve the recovery in retail rates by an electrical corporation of certain costs for transmission facilities that are incurred in certain circumstances if not approved for recovery in transmission rates by the Federal Energy Regulatory Commission.

This bill would revise and recast certain of the definitions applicable to the California Renewables Portfolio Standard Program *and would revise certain requirements applicable to the State Energy Resources Conservation and Development Commission for certifying when an eligible renewable energy resource may earn a renewable energy credit.*

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

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

- 1 SECTION 1. Section 399.2.5 of the Public Utilities Code is
- 2 amended to read:
- 3 399.2.5. (a) Notwithstanding Sections 1001 to 1013, inclusive,
- 4 an application of an electrical corporation for a certificate
- 5 authorizing the construction of new transmission facilities is
- 6 necessary to the provision of electric service if the commission
- 7 finds that the new facility facilitates achievement of the renewables
- 8 portfolio standard established in Article 16 (commencing with
- 9 Section 399.11).
- 10 (b) With respect to a transmission facility described in
- 11 subdivision (a), the commission shall take all feasible actions to
- 12 ensure that the transmission rates established by the Federal Energy
- 13 Regulatory Commission are fully reflected in any retail rates
- 14 established by the commission. These actions shall include all of
- 15 the following:
- 16 (1) Making findings, where supported by an evidentiary record,
- 17 that those transmission facilities provide benefit to the transmission

1 network and facilitate the achievement of the renewables portfolio
2 standard established in Article 16 (commencing with Section
3 399.11).

4 (2) Directing the utility to which the generator will be
5 interconnected, where the direction is not preempted by federal
6 law, to seek the recovery through general transmission rates of the
7 costs associated with the transmission facilities.

8 (3) Asserting the positions described in paragraphs (1) and (2)
9 to the Federal Energy Regulatory Commission in appropriate
10 proceedings.

11 (4) Allowing recovery in retail rates of any increase in
12 transmission costs incurred by an electrical corporation resulting
13 from the construction of the transmission facilities that are not
14 approved for recovery in transmission rates by the Federal Energy
15 Regulatory Commission after the commission determines that the
16 costs were ~~prudently incurred in accordance with subdivision (a)~~
17 ~~of Section 454.~~ *reasonably and prudently incurred, subject to any*
18 *rule adopted by the commission pursuant to subdivision (b) of*
19 *Section 454, concerning the showing to be made in support of*
20 *proposed rate changes.*

21 (c) (1) The commission, prior to making a finding pursuant to
22 subdivision (a), may approve an advice letter from an electrical
23 corporation seeking, for a specific transmission project, a finding
24 of eligibility for cost recovery pursuant to paragraph (4) of
25 subdivision (b). Ultimate recovery of construction costs shall be
26 contingent upon the commission finding, pursuant to subdivision
27 (a), that the facility facilitates achievement of the renewables
28 portfolio standard established pursuant to Article 16 (commencing
29 with Section 399.11), and upon a determination by the commission
30 that the costs were ~~prudently incurred pursuant to subdivision (a)~~
31 ~~of Section 454.~~ *reasonably and prudently incurred, subject to any*
32 *rule adopted by the commission pursuant to subdivision (b) of*
33 *Section 454, concerning the showing to be made in support of*
34 *proposed rate changes.*

35 (2) (A) The commission may approve cost recovery, in retail
36 rates, for preconstruction costs if requested in an application of an
37 electrical corporation for a certificate authorizing the construction
38 of new transmission facilities if the commission finds that the new
39 facility facilitates achievement of the renewables portfolio standard
40 established in Article 16 (commencing with Section 399.11) *and*

1 *that the costs were reasonably and prudently incurred, subject to*
2 *any rule adopted by the commission pursuant to subdivision (b)*
3 *of Section 454, concerning the showing to be made in support of*
4 *proposed rate changes.*

5 (B) The commission may approve cost recovery, in retail rates,
6 for preconstruction costs if requested in an application or advice
7 letter of an electrical corporation that seeks approval for
8 preconstruction costs for a potential transmission facility if the
9 utility certifies, at the time of filing the application, that it expects
10 that the facility will facilitate achievement of the renewables
11 portfolio standard established in Article 16 (commencing with
12 Section 399.11). If the request for recovery of preconstruction
13 costs is made in an application that the commission finds contains
14 an adequate showing that the costs to be incurred are reasonable,
15 the commission may approve recovery in retail rates without a
16 subsequent reasonableness review. If the request for recovery of
17 preconstruction costs is made in an advice letter, retail rate recovery
18 is contingent upon a subsequent reasonableness review, unless
19 otherwise ordered by the commission.

20 (3) The commission’s determination that transmission facilities
21 are eligible for cost recovery pursuant to paragraph (1) or (2) is
22 not binding upon the commission when determining the need for
23 the transmission facilities pursuant to Chapter 5 (commencing with
24 Section 1001) or upon the commission’s determination whether
25 the facility will facilitate achievement of the renewables portfolio
26 standard established in Article 16 (commencing with Section
27 399.11).

28 (d) Any cost recovery pursuant to subdivision (b) or (c) shall
29 be limited to costs that are not approved for recovery in
30 transmission rates by the Federal Energy Regulatory Commission.

31 SEC. 2. Section 399.12 of the Public Utilities Code is amended
32 to read:

33 399.12. For purposes of this article, the following terms have
34 the following meanings:

35 (a) “Conduit hydroelectric facility” means a facility for the
36 generation of electricity that uses only the hydroelectric potential
37 of an existing pipe, ditch, flume, siphon, tunnel, canal, or other
38 manmade conduit that is operated to distribute water for a
39 beneficial use.

1 (b) “Delivered” and “delivery” have the same meaning as
2 provided in subdivision (a) of Section 25741 of the Public
3 Resources Code.

4 (c) “Eligible renewable energy resource” means an electrical
5 generating facility that meets the definition of an “in-state
6 renewable electricity generation facility” in Section 25741 of the
7 Public Resources Code, subject to the following limitations:

8 (1) (A) An existing small hydroelectric generation facility of
9 30 megawatts or less shall be eligible only if a retail seller or local
10 publicly owned electric utility owned or procured the electricity
11 from the facility as of December 31, 2005. A new hydroelectric
12 facility is not an eligible renewable energy resource if it will cause
13 an adverse impact on instream beneficial uses or cause a change
14 in the volume or timing of streamflow.

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

23 (2) A facility engaged in the combustion of municipal solid
24 waste shall not be considered an eligible renewable resource unless
25 it is located in Stanislaus County and was operational prior to
26 September 26, 1996.

27 (d) “Procure” means to acquire through ownership or contract.
28 For purposes of meeting the renewables portfolio standard
29 procurement requirements, a retail seller or local publicly owned
30 electric utility may procure either delivered electricity generated
31 by an eligible renewable energy resource that it owns or for which
32 it has entered into an electricity purchase agreement. Nothing in
33 this article is intended to imply that the purchase of electricity from
34 third parties in a wholesale transaction is the preferred method of
35 fulfilling a retail seller’s obligation to comply with this article or
36 the obligation of a local publicly owned electric utility to meet its
37 renewables portfolio standard implemented pursuant to Section
38 387.

39 (e) (1) “Renewable energy credit” means a certificate of proof
40 associated with the generation of electricity from an eligible

1 renewable energy resource, issued through the accounting system
2 established by the Energy Commission pursuant to Section 399.13,
3 that one unit of electricity was generated and delivered by an
4 eligible renewable energy resource.

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

12 (3) No electricity generated by an eligible renewable energy
13 resource attributable to the use of nonrenewable fuels, beyond a
14 de minimis quantity used to generate electricity in the same process
15 through which the facility converts renewable fuel to electricity,
16 shall result in the creation of a renewable energy credit. The Energy
17 Commission shall set the de minimis quantity of nonrenewable
18 fuels for each renewable energy technology at a level of no more
19 than 2 percent of the total quantity of fuel used by the technology
20 to generate electricity. ~~If, however, a specific facility demonstrates~~
21 ~~that a higher de minimis quantity will permit it to significantly~~
22 ~~increase its utilization of renewable fuel and reduce the variability~~
23 ~~of its electrical output, the Energy Commission may set the de~~
24 ~~minimis quantity for that facility at a level of no more than 10~~
25 ~~percent of the total quantity of energy used by the facility to~~
26 ~~generate electricity. The Energy Commission may adjust the de~~
27 ~~minimis quantity for an individual facility, up to a maximum of 5~~
28 ~~percent, if it finds that both of the following conditions are met:~~

29 (A) *The facility demonstrates that the higher quantity of*
30 *nonrenewable fuel will lead to a meaningful increase in generation*
31 *from the eligible renewable energy facility that is greater than*
32 *generation from the nonrenewable fuel alone.*

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

37 (f) “Renewables portfolio standard” means the specified
38 percentage of electricity generated by eligible renewable energy
39 resources that a retail seller is required to procure pursuant to this
40 article or the obligation of a local publicly owned electric utility

1 to meet its renewables portfolio standard implemented pursuant
2 to Section 387.

3 (g) “Retail seller” means an entity engaged in the retail sale of
4 electricity to end-use customers located within the state, including
5 any of the following:

6 (1) An electrical corporation, as defined in Section 218.

7 (2) A community choice aggregator. The commission shall
8 institute a rulemaking to determine the manner in which a
9 community choice aggregator will participate in the renewables
10 portfolio standard program subject to the same terms and conditions
11 applicable to an electrical corporation.

12 (3) An electric service provider, as defined in Section 218.3,
13 for all sales of electricity to customers beginning January 1, 2006.
14 The commission shall institute a rulemaking to determine the
15 manner in which electric service providers will participate in the
16 renewables portfolio standard program. The electric service
17 provider shall be subject to the same terms and conditions
18 applicable to an electrical corporation pursuant to this article.
19 Nothing in this paragraph shall impair a contract entered into
20 between an electric service provider and a retail customer prior to
21 the suspension of direct access by the commission pursuant to
22 Section 80110 of the Water Code.

23 (4) “Retail seller” does not include any of the following:

24 (A) A corporation or person employing cogeneration technology
25 or producing electricity consistent with subdivision (b) of Section
26 218.

27 (B) The Department of Water Resources acting in its capacity
28 pursuant to Division 27 (commencing with Section 80000) of the
29 Water Code.

30 (C) A local publicly owned electric utility.

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