

Introduced by Senator Pavley
(Coauthor: Assembly Member Brownley)

February 27, 2009

An act to add Sections 387.2 and 399.21 to the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 523, as introduced, Pavley. Renewable energy resources: feed-in tariff.

(1) 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 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. The 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 California Renewables Portfolio Standard 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.

This bill would require every electrical corporation with more than 100,000 service connections to develop and, upon approval by the commission, implement a standard-offer contract and feed-in tariff, as defined, that requires the electrical corporation to purchase every kilowatthour of electricity delivered to the grid that is generated by a tariff-eligible generation facility. The bill would require the commission to approve the standard-offer contract and feed-in tariff at a rate and upon those terms that the commission determines are reasonable on a market segment, as specified, and technology specific basis in consideration of certain criteria. Each electrical corporation would be required to obtain commission approval of a standard-offer contract and feed-in tariff by June 1, 2010, and to implement the standard-offer contract and feed-in tariff by July 1, 2010. The bill would authorize an electrical corporation to offer optional alternative standard-offer contracts and feed-in tariffs of differing duration upon approval by the commission. The bill would require an electrical corporation to make

the standard-offer contract or feed-in tariff available to the owner or operator of a tariff-eligible generation facility on a first-come-first-served basis until the time that 2% of total retail sales of electricity by the electrical corporation is generated by tariff-eligible generation facilities. The bill would require that after June 30, 2014, the commission review the effectiveness of the implementation of standard-offer contracts and feed-in tariffs in advancing specified purposes and would authorize the commission to revise the program as it sees fit for additional tariff-eligible generation facilities. The bill would authorize the commission to modify the above-described 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 every kilowatthour of electricity generated by a tariff-eligible generation facility receiving service pursuant to the standard-offer contract or feed-in tariff count toward meeting the electrical corporation's requirements pursuant to the renewable portfolio standard and the California Global Warming Solutions Act of 2006.

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.

(2) Under existing law the governing board of a local publicly owned electric utility is responsible for implementing and enforcing a renewables portfolio standard for the utility that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement.

This bill would require the governing board of a local publicly owned electric utility with more than 100,000 service connections to develop and implement a feed-in tariff that provides for payment for every kilowatthour of electricity generated by a tariff-eligible generation facility that is delivered to the grid. The bill requires that the tariff price to be paid by the utility be approved by the governing board and be of a duration of not less than 20 years. The bill would authorize the utility to offer optional alternative feed-in tariffs of differing duration and to make the terms of a feed-in tariff available to owners or operators of a tariff-eligible generation facility in the form of a non-negotiable standard-offer contract for a term of 20 years, and any other contract

durations determined to be necessary and reasonable by the utility’s governing board. The bill would provide that every kilowatthour of electricity generated by a tariff-eligible generation facility receiving service pursuant to the feed-in tariff or contract count toward meeting the utility’s renewable portfolio standard and the California Global Warming Solutions Act of 2006. Because the bill would require actions to be undertaken by local publicly owned electric utilities which are entities of local government, the bill would impose a state-mandated local program.

(3) 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 specified reasons.

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. This act shall be known and may be cited as the
- 2 Renewable Energy and Economic Stimulus Act of 2009.
- 3 SEC. 2. Section 387.2 is added to the Public Utilities Code, to
- 4 read:
- 5 387.2. (a) For purposes of this section, the following terms
- 6 have the following meanings:
- 7 (1) “Feed-in tariff” means a schedule detailing the rates, rules,
- 8 and terms of service that is approved by the governing board of a
- 9 local publicly owned electric utility that governs the purchase of
- 10 electricity delivered to the grid that is generated by a tariff-eligible
- 11 generation facility.
- 12 (2) “Tariff-eligible generation facility” means a facility for the
- 13 generation of electricity that meets all of the following criteria:
- 14 (A) Has a nameplate capacity of 20 megawatts or less.
- 15 (B) Is an eligible renewable energy resource, as defined in
- 16 Section 399.12.
- 17 (C) Is interconnected and operates in parallel with the electric
- 18 transmission and distribution grid.
- 19 (D) Is located within the service territory of the local publicly
- 20 owned electric utility.

1 (b) It is the policy of this state and the intent of the Legislature
2 to encourage energy production from renewable resources in an
3 amount commensurate with electricity demand. Utilization of
4 feed-in tariffs for electricity generated by eligible renewable energy
5 resources can help the state achieve its renewable energy and
6 climate change mitigation goals. It is the further intent of the
7 Legislature that local publicly owned electric utilities retain
8 flexibility and wide discretion in developing their feed-in tariff.

9 (c) (1) The governing board of each local publicly owned
10 electric utility with more than 100,000 service connections shall
11 develop and implement a feed-in tariff that provides for payment
12 for every kilowatthour of electricity generated and delivered to
13 the grid by a tariff-eligible generation facility. The tariff price to
14 be paid by the utility shall be approved by the governing board
15 and shall be for a duration of not less than 20 years.

16 (2) This subdivision does not prohibit a local publicly owned
17 utility from offering optional alternative feed-in tariffs of differing
18 duration that authorize an owner or operator of a tariff-eligible
19 generation facility to elect to receive service pursuant to the
20 optional alternative tariff.

21 (3) The local publicly owned electric utility may make the terms
22 of the feed-in tariff available to owners or operators of a
23 tariff-eligible generation facility in the form of a non-negotiable
24 standard-offer contract for a term of 20 years, and any other
25 contract durations determined to be necessary and reasonable by
26 the governing board.

27 (4) This subdivision does not limit the authority of a local
28 publicly owned electric utility to enter into bilateral contracts for
29 the purchase of electricity to meet its renewables portfolio standard
30 procurement requirements or for resource adequacy purposes.

31 (d) Every kilowatthour of electricity generated by a tariff-eligible
32 generation facility receiving service pursuant to paragraph (1), (2),
33 or (3) of subdivision (c) shall count toward meeting the local
34 publicly owned utility's renewables portfolio standard procurement
35 requirements adopted pursuant to Section 387.

36 (e) Every kilowatthour of electricity generated by a tariff-eligible
37 generation facility receiving service pursuant to paragraph (1), (2),
38 or (3) of subdivision (c) shall count toward any renewable energy
39 procurement requirement imposed pursuant to the California Global

1 Warming Solutions Act of 2006 (Division 25.5 (commencing with
2 Section 38500) of the Health and Safety Code).

3 SEC. 3. Section 399.21 is added to the Public Utilities Code,
4 to read:

5 399.21. (a) For purposes of this section, the following terms
6 have the following meanings:

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

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

- 14 (A) Has a nameplate capacity of 20 megawatts or less.
- 15 (B) Is an eligible renewable energy resource.
- 16 (C) Is interconnected and operates in parallel with the electric
17 transmission and distribution grid.
- 18 (D) Is located within the service territory of the electrical
19 corporation.

20 (b) The commission shall implement the requirements of this
21 section for each electrical corporation with more than 100,000
22 service connections in the state. The commission may modify the
23 requirements of this section for an electrical corporation with less
24 than 100,000 service connections in the state based upon the
25 individual circumstances of that electrical corporation.

26 (c) (1) It is the policy of this state and the intent of the
27 Legislature to encourage energy production from renewable
28 resources in an amount commensurate with electricity demand.

29 (2) Utilization of feed-in tariffs can help electrical corporations
30 achieve their renewables portfolio standard procurement
31 requirements and assist the state to achieve all of the following:

- 32 (A) The deployment of eligible renewable energy resources in
33 a timely manner in order to eliminate, to the greatest extent
34 possible, the need for additional powerplants using fossil fuels,
35 and to avoid building unnecessary additional transmission lines
36 where distributed resources can substitute for central-station
37 eligible renewable energy resources.
- 38 (B) The growth of green-collar jobs in California by developing
39 industries that build and deploy eligible renewable energy
40 resources.

1 (C) The expansion of market opportunities for renewable energy
2 technologies.

3 (D) The reduction of transaction costs that substantially limit
4 participation of small renewable distributed generation in
5 renewables portfolio standard solicitations.

6 (E) The financing of renewable energy projects by ensuring a
7 predictable and stable revenue stream for project developers.

8 (F) The creation of a robust renewable energy resource base in
9 California that will allow electrification of transportation with
10 electric vehicles and plug-in hybrid electric vehicles.

11 (d) (1) An electrical corporation shall develop and, upon
12 approval by the commission, implement a standard-offer contract
13 and a feed-in tariff that requires payment for every kilowatthour
14 of electricity generated and delivered to the grid by a tariff-eligible
15 generation facility. The contract and tariff price to be paid by the
16 electrical corporation shall be for a duration of not less than 20
17 years. The standard-offer contract and feed-in tariff shall be
18 reviewed and, if needed, updated on a biennial basis. The updated
19 standard-offer contract and feed-in tariff would be applicable to a
20 tariff-eligible generation facility that interconnects to the grid or
21 commences initial operation subsequent to the operative date of
22 the update.

23 (2) The commission shall approve the standard-offer contract
24 and feed-in tariff at a rate and upon those terms that the commission
25 determines are reasonable.

26 (3) The reasonableness of prices paid for electricity pursuant to
27 the feed-in tariff shall be determined for the following market
28 segments:

29 (A) One to 3 megawatts.

30 (B) Three to 20 megawatts.

31 (4) A feed-in tariff price shall be developed and implemented
32 for each market segment for each of the following technologies:

33 (A) Thin-film solar photovoltaic.

34 (B) Solar photovoltaic technologies other than thin-film.

35 (C) Solar thermal electric.

36 (D) Wind.

37 (E) Biogas, digester gas, and landfill gas.

38 (F) Biomass and municipal solid waste conversion.

39 (G) Geothermal.

40 (H) Small hydroelectric.

1 (I) Any additional technology that the commission determines
2 is an eligible renewable energy resource and that holds promise
3 to contribute toward meeting the state's renewable energy goals.
4 The maximum feed-in tariff price paid by an electrical corporation
5 pursuant to this subparagraph is thirty cents (\$0.30) per
6 kilowatthour.

7 (5) The commission shall, in approving the standard-offer
8 contract and feed-in tariff, and any update, consider the following
9 criteria in determining the standard-offer contract and feed-in tariff
10 price for each technology:

11 (A) The cost of production of each technology, to be determined
12 by the Energy Commission, based on typical technology costs for
13 each market segment and each technology and on typical renewable
14 energy resources available in the state.

15 (B) A reasonable profit for developers of tariff-eligible
16 generation facilities, commensurate to those authorized by the
17 commission for a reasonable rate of return for the electrical
18 corporations.

19 (C) A market transformation premium, designed to provide a
20 short-term additional price component for accelerated investments
21 in renewable energy technologies, in the amount of a 10 percent
22 payment above the amount provided by the two prior criteria,
23 declining to 7.5 percent in the second year, 5 percent in the third
24 year, and 2.5 percent in the fourth year. No market transformation
25 premium shall be paid beginning with the beginning of the fifth
26 year.

27 (D) The availability of federal and state tax credits.

28 (6) An electrical corporation shall obtain commission approval
29 of a standard-offer contract and feed-in tariff by June 1, 2010, and
30 the standard-offer contract and feed-in tariff shall be implemented
31 by July 1, 2010.

32 (7) The commission shall review for reasonableness the price
33 paid by the electrical corporation pursuant to the standard-offer
34 contract and feed-in tariff on at least a biennial basis.

35 (8) Expenses incurred by an electrical corporation for purchases
36 of electricity under a commission approved standard-offer contract
37 or feed-in tariff shall be fully recoverable by the electrical
38 corporation in rates.

39 (9) This subdivision does not prohibit an electrical corporation,
40 upon approval by the commission, from offering optional

1 alternative standard-offer contracts and feed-in tariffs of differing
2 duration that authorize an owner or operator of a tariff-eligible
3 generation facility to elect to receive service pursuant to the
4 optional alternative tariff.

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

10 (e) (1) Each electrical corporation shall make the standard-offer
11 contract and feed-in tariff available to the owner or operator of a
12 tariff-eligible generation facility upon request, on a
13 first-come-first-served basis until the time that 2 percent of total
14 retail sales of electricity by the electrical corporation is generated
15 by tariff-eligible generation facilities.

16 (2) After June 30, 2014, the commission shall review the
17 effectiveness of the implementation of this section in furthering
18 the goals of subdivision (c). The commission may, upon completion
19 of this review, revise the program as it sees fit for additional
20 tariff-eligible generation facilities. The commission shall consider,
21 in its review, the net cost to ratepayers of the program, the
22 reliability of the electrical grid as a consequence of tariff-eligible
23 generation facilities interconnections, and any related system
24 upgrades, and progress to achieving the goals of this article.

25 (f) (1) The commission shall, in consultation with the Energy
26 Commission, electrical corporations, and the distributed generation
27 industry, develop and implement rules for tariff-eligible generation
28 facilities for interconnection to the distribution grid of the electrical
29 corporation.

30 (2) It is the intent of the Legislature that the commission
31 continue to apply Rule 21, as revised in Decisions 00-12-037 and
32 01-07-027, to interconnections by tariff-eligible generation
33 facilities to electrical corporation distribution systems, without
34 codifying that rule, in order that the commission retain flexibility
35 over interconnections resulting from changing circumstances and
36 technological advancements.

37 (3) This subdivision does not limit the ability of a tariff-eligible
38 generation facility to interconnect to the transmission grid pursuant
39 to the Small Generator Interconnection Protocol of the Independent

1 System Operator and approved by the Federal Energy Regulatory
2 Commission.

3 (g) Every kilowatthour of electricity generated by a tariff-eligible
4 generation facility receiving service pursuant to subdivision (c) or
5 (d) shall count toward the electrical corporation's renewables
6 portfolio standard annual procurement targets for purposes of
7 paragraph (1) of subdivision (b) of Section 399.15.

8 (h) Every kilowatthour of electricity generated by a
9 tariff-eligible generation facility receiving service pursuant to
10 subdivision (c) or (d) shall count toward any renewable energy
11 procurement requirement imposed pursuant to the California Global
12 Warming Solutions Act of 2006 (Division 25.5 (commencing with
13 Section 38500) of the Health and Safety Code).

14 (i) The physical generating capacity of a tariff-eligible
15 generation facility shall count toward the electrical corporation's
16 resource adequacy requirement for purposes of Section 380, as
17 determined by relevant renewable energy capacity credits
18 developed by the commission and the California Independent
19 System Operator.

20 (j) A customer or host facility may have separate tariff-eligible
21 generation facilities that participate in the California Solar
22 Initiative, net energy metering pursuant to Section 2827, or as
23 tariff-eligible generation facilities, on the condition that each
24 facility is separately metered. A tariff-eligible generation facility
25 shall have a dedicated meter, shall not be eligible for net energy
26 metering, and shall not be eligible for incentives pursuant to the
27 California Solar Initiative or self-generation incentive program
28 administered pursuant to Section 379.6.

29 (k) Performance assurances shall not be required for a
30 tariff-eligible generation facility.

31 (l) The implementation of the requirements of this section shall
32 not constitute implementation by the commission of the federal
33 Public Utility Regulatory Policies Act of 1978 (Public Law
34 95-617).

35 SEC. 4. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 certain costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of

1 the Government Code, or changes the definition of a crime within
2 the meaning of Section 6 of Article XIII B of the California
3 Constitution.

4 With respect to certain other costs, no reimbursement is required
5 by this act pursuant to Section 6 of Article XIII B of the California
6 Constitution because a local agency or school district has the
7 authority to levy service charges, fees, or assessments sufficient
8 to pay for the program or level of service mandated by this act,
9 within the meaning of Section 17556 of the Government Code.

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