

AMENDED IN SENATE MARCH 22, 2010

SENATE BILL

No. 1247

Introduced by Senator Dutton

February 19, 2010

An act to amend Section ~~701~~ of 399.12 of, and to repeal Section 399.12.5 of, the Public Utilities Code, relating to ~~public utilities~~ energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1247, as amended, Dutton. ~~Public utilities.~~ *Renewable energy resources.*

The existing California Renewables Portfolio Standard Program requires the Public Utilities Commission to implement annual procurement targets for the procurement of eligible renewable energy resources, as defined, for all retail sellers, as defined, to achieve the targets and goals of the program.

This bill would delete the existing definition of an eligible renewable energy resource and, instead, define the term to mean an electric generating facility that uses biomass, solar energy, wind, geothermal, fuel cells using renewable fuels, hydroelectric generation, nuclear generation, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology. The bill would make other conforming changes and repeal certain provisions relating to the eligibility of hydroelectric generation.

~~Under existing law, the Public Utilities Commission has regulatory authority over public utilities, as defined. The existing Public Utilities Act sets forth the general regulatory responsibilities of the commission with respect to all public utilities. Existing law authorizes the commission to supervise and regulate every public utility and to do all~~

things, whether specifically designated in the act or in addition to the act, which are necessary and convenient in the exercise of its power and jurisdiction.

This bill would make technical and nonsubstantive changes to the provision that authorizes the commission to do all things that are necessary and convenient in the exercise of its power and jurisdiction.

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

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

1 SECTION 1. Section 399.12 of the Public Utilities Code is
2 amended to read:

3 399.12. For purposes of this article, the following terms have
4 the following meanings:

5 (a) “Conduit hydroelectric facility” means a facility for the
6 generation of electricity that uses only the hydroelectric potential
7 of an existing pipe, ditch, flume, siphon, tunnel, canal, or other
8 manmade conduit that is operated to distribute water for a
9 beneficial use.

10 (b)
11 (a) “Delivered” and “delivery” have the same meaning as
12 provided in subdivision (a) of Section 25741 of the Public
13 Resources Code.

14 (c) “Eligible renewable energy resource” means an electric
15 generating facility that meets the definition of “in-state renewable
16 electricity generation facility” in Section 25741 of the Public
17 Resources Code, subject to the following limitations:

18 (1) (A) An existing small hydroelectric generation facility of
19 30 megawatts or less shall be eligible only if a retail seller or local
20 publicly owned electric utility owned or procured the electricity
21 from the facility as of December 31, 2005. A new hydroelectric
22 facility is not an eligible renewable energy resource if it will cause
23 an adverse impact on instream beneficial uses or cause a change
24 in the volume or timing of streamflow.

25 (B) Notwithstanding subparagraph (A), a conduit hydroelectric
26 facility of 30 megawatts or less that commenced operation before
27 January 1, 2006, is an eligible renewable energy resource. A
28 conduit hydroelectric facility of 30 megawatts or less that
29 commences operation after December 31, 2005, is an eligible

1 renewable energy resource so long as it does not cause an adverse
2 impact on instream beneficial uses or cause a change in the volume
3 or timing of streamflow.

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

8 *(b) “Eligible renewable energy resource” means an electric
9 generating facility that uses biomass, solar energy, wind,
10 geothermal, fuel cells using renewable fuels, hydroelectric
11 generation, nuclear generation, digester gas, municipal solid waste
12 conversion, landfill gas, ocean wave, ocean thermal, or tidal
13 current, and any additions or enhancements to the facility using
14 that technology.*

15 ~~(d)~~

16 *(c) “Procure” means that a retail seller or local publicly owned
17 electric utility receives delivered electricity generated by an eligible
18 renewable energy resource that it owns or for which it has entered
19 into an electricity purchase agreement. Nothing in this article is
20 intended to imply that the purchase of electricity from third parties
21 in a wholesale transaction is the preferred method of fulfilling a
22 retail seller’s obligation to comply with this article or the obligation
23 of a local publicly owned electric utility to meet its renewables
24 portfolio standard implemented pursuant to Section 387.*

25 ~~(e)~~

26 *(d) “Renewables portfolio standard” means the specified
27 percentage of electricity generated by eligible renewable energy
28 resources that a retail seller is required to procure pursuant to this
29 article or the obligation of a local publicly owned electric utility
30 to meet its renewables portfolio standard implemented pursuant
31 to Section 387.*

32 ~~(f)~~

33 *(e) (1) “Renewable energy credit” means a certificate of proof,
34 issued through the accounting system established by the Energy
35 Commission pursuant to Section 399.13, that one unit of electricity
36 was generated and delivered by an eligible renewable energy
37 resource.*

38 *(2) “Renewable energy credit” includes all renewable and
39 environmental attributes associated with the production of
40 electricity from the eligible renewable energy resource, except for*

1 an emissions reduction credit issued pursuant to Section 40709 of
 2 the Health and Safety Code and any credits or payments associated
 3 with the reduction of solid waste and treatment benefits created
 4 by the utilization of biomass or biogas fuels.

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

9 ~~(g)~~

10 (f) (1) “Retail seller” means an entity engaged in the retail sale
 11 of electricity to end-use customers located within the state,
 12 including any of the following:

13 ~~(1)~~

14 (A) An electrical corporation, as defined in Section 218.

15 ~~(2)~~

16 (B) A community choice aggregator. The commission shall
 17 institute a rulemaking to determine the manner in which a
 18 community choice aggregator will participate in the renewables
 19 portfolio standard program subject to the same terms and conditions
 20 applicable to an electrical corporation.

21 ~~(3)~~

22 (C) An electric service provider, as defined in Section 218.3,
 23 for all sales of electricity to customers beginning January 1, 2006.
 24 The commission shall institute a rulemaking to determine the
 25 manner in which electric service providers will participate in the
 26 renewables portfolio standard program. The electric service
 27 provider shall be subject to the same terms and conditions
 28 applicable to an electrical corporation pursuant to this article.
 29 Nothing in this paragraph shall impair a contract entered into
 30 between an electric service provider and a retail customer prior to
 31 the suspension of direct access by the commission pursuant to
 32 Section 80110 of the Water Code.

33 ~~(4)~~

34 (2) “Retail seller” does not include any of the following:

35 (A) A corporation or person employing cogeneration technology
 36 or producing electricity consistent with subdivision (b) of Section
 37 218.

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

1 (C) A local publicly owned electric utility.

2 *SEC. 2. Section 399.12.5 of the Public Utilities Code is*
3 *repealed.*

4 ~~399.12.5. (a) Notwithstanding subdivision (c) of Section~~
5 ~~399.12, a small hydroelectric generation facility that satisfies the~~
6 ~~criteria for an eligible renewable energy resource pursuant to~~
7 ~~Section 399.12 shall not lose its eligibility if efficiency~~
8 ~~improvements undertaken after January 1, 2008, cause the~~
9 ~~generating capacity of the facility to exceed 30 megawatts, and~~
10 ~~the efficiency improvements do not result in an adverse impact on~~
11 ~~instream beneficial uses or cause a change in the volume or timing~~
12 ~~of streamflow. The entire generating capacity of the facility shall~~
13 ~~be eligible.~~

14 ~~(b) Notwithstanding subdivision (c) of Section 399.12, the~~
15 ~~incremental increase in the amount of electricity generated from~~
16 ~~a hydroelectric generation facility as a result of efficiency~~
17 ~~improvements at the facility, is electricity from an eligible~~
18 ~~renewable energy resource, without regard to the electrical output~~
19 ~~of the facility, if all of the following conditions are met:~~

20 ~~(1) The incremental increase is the result of efficiency~~
21 ~~improvements from a retrofit that do not result in an adverse impact~~
22 ~~on instream beneficial uses or cause a change in the volume or~~
23 ~~timing of streamflow.~~

24 ~~(2) (A) The hydroelectric generation facility has, within the~~
25 ~~immediately preceding 15 years, received certification from the~~
26 ~~State Water Resources Control Board pursuant to Section 401 of~~
27 ~~the Clean Water Act (33 U.S.C. Sec. 1341), or has received~~
28 ~~certification from a regional board to which the state board has~~
29 ~~delegated authority to issue certification, unless the facility is not~~
30 ~~subject to certification because there is no potential for discharge~~
31 ~~into waters of the United States.~~

32 ~~(B) If the hydroelectric facility is not located in California, the~~
33 ~~certification pursuant to Section 401 of the federal Clean Water~~
34 ~~Act (33 U.S.C. Sec. 1341) may be received from the applicable~~
35 ~~state board or agency or from a regional board to which the state~~
36 ~~board has delegated authority to issue the certification.~~

37 ~~(3) The hydroelectric generation facility is owned by a retail~~
38 ~~seller or a local publicly owned electric utility, was operational~~
39 ~~prior to January 1, 2007, the efficiency improvements are initiated~~
40 ~~on or after January 1, 2008, the efficiency improvements are not~~

1 the result of routine maintenance activities, as determined by the
2 Energy Commission, and the efficiency improvements were not
3 included in any resource plan sponsored by the facility owner prior
4 to January 1, 2008.

5 (4) All of the incremental increase in electricity resulting from
6 the efficiency improvements are demonstrated to result from a
7 long-term financial commitment by the retail seller or local publicly
8 owned electric utility. For purposes of this paragraph, "long-term
9 financial commitment" means either new ownership investment
10 in the facility by the retail seller or local publicly owned electric
11 utility or a new or renewed contract with a term of 10 or more
12 years, which includes procurement of the incremental generation.

13 (e) The incremental increase in the amount of electricity
14 generated from a hydroelectric generation facility as a result of
15 efficiency improvements at the facility are not eligible for
16 supplemental energy payments pursuant to the Renewable Energy
17 Resources Program (Chapter 8.6 (commencing with Section 25740)
18 of Division 15 of the Public Resources Code), or a successor
19 program.

20 SECTION 1. Section 701 of the Public Utilities Code is
21 amended to read:

22 701. The commission may supervise and regulate every public
23 utility in the state and may do all things, whether specifically
24 designated in this part or in addition thereto, that it determines are
25 necessary and convenient in the exercise of its power and
26 jurisdiction, in meeting its obligations.