AMENDED IN SENATE MAY 25, 2010

AMENDED IN SENATE MARCH 22, 2010

SENATE BILL No. 1247

Introduced by Senator Dutton
(Coauthors: Senators Aanestad and Cox)

February 19, 2010

~~An act to amend Section 399.12 of, and to repeal Section 399.12.5 of, the Public Utilities Code, relating to energy.~~ *An act to amend Sections 399.12 and 399.12.5 of the Public Utilities Code, relating to energy, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1247, as amended, Dutton. Renewable energy~~ resources.~~ *resources: hydroelectric generation facilities.*

~~The~~

(1) 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. *Existing law defines "eligible renewable energy resource" to mean an electric generating facility that uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, 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, and that meets at least one other requirement.*

This bill would~~ delete the existing~~ *expand the* 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~~ *to include hydroelectric generation facilities of any generating capacity that commenced initial commercial operation after January 1, 2006*. The bill would make other conforming changes ~~and repeal certain provisions relating to the eligibility of hydroelectric generation~~.

(2) Under existing law, 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 resource for purposes of the California Renewables Portfolio Standard Program if certain requirements are met. One of these requirements is that the hydroelectric generation facility has been certified within the immediately preceding 15 years by the State Water Resources Control Board pursuant to the federal Clean Water Act or by a California regional water quality control board to which the state board has delegated authority.

This bill would adopt an alternative to that requirement for the Rock Creek Powerhouse hydroelectric generation facility.

(3) The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~ *2/3*. 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.

~~(a)~~

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

~~(b) "Eligible renewable energy resource" means 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.~~

(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, except as follows:

(1) (A) A 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.

(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.

(2) A hydroelectric generation facility of any capacity that commenced initial commercial operation on or after January 1, 2006, shall be considered an eligible renewable energy resource. A hydroelectric facility shall not be considered an eligible renewable energy resource pursuant to this paragraph if it will cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(3) 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.

~~(c)~~

(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.

~~(d)~~

(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.

~~(e)~~

(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.

~~(f)~~

(g) (1) "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:

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

(B) 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.

(C) 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.

(2) "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 repealed.~~

SEC. 2. Section 399.12.5 of the Public Utilities Code is amended to read:

399.12.5. (a) 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) Notwithstanding subdivision (c) of Section 399.12, 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) (A) 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 *federal* 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 not subject to certification because there is no potential for discharge into waters of the United States.

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

(C) If the hydroelectric generation facility is the Rock Creek Powerhouse, Federal Energy Regulatory Commission Project Number 1962, the efficiency improvements have received any necessary incremental certification from the State Water Resources Control Board.

(3) The hydroelectric generation facility is owned by a retail seller or a local publicly owned electric utility, 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.

(c) 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.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address, as soon as possible, rising electricity rates that will slow the economic recovery of this state, it is necessary that this act take effect immediately.

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