

AMENDED IN ASSEMBLY AUGUST 11, 2010

AMENDED IN ASSEMBLY AUGUST 5, 2010

AMENDED IN SENATE JUNE 30, 2010

AMENDED IN SENATE JUNE 21, 2010

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 ~~Sections 399.12 and~~ *Section* 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: hydroelectric generation facilities.

The existing California Renewables Portfolio Standard Program (RPS program) requires the Public Utilities Commission to implement annual procurement targets for the procurement of eligible renewable energy resources for all retail sellers, as defined, to achieve the targets and goals of the program. The existing definition of an eligible renewable energy resource includes certain small hydroelectric generation facilities, conduit hydroelectric facilities, and the incremental increase in electrical generation resulting from efficiency improvements (repowering) of existing larger hydroelectric facilities, subject to the condition that a

new small or conduit hydroelectric facility or repowered facility not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

This bill would ~~revise that condition to provide that the new small or conduit hydroelectric facility; or repowered facility, not result in an adverse impact on instream beneficial uses or cause that is an eligible renewable energy resource as of January 1, 2010, shall not lose eligibility if it causes a change in the volume or timing of streamflow pursuant to a current license issued, if those changes are required by license conditions approved, pursuant to the Federal Power Act, on or after January 1, 2010.~~

An additional requirement for eligibility for the incremental increase in electrical generation resulting from repowering of an existing larger hydroelectric facility; is that the 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.

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

Vote: $\frac{2}{3}$. 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 399.12 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) ~~“Delivered” and “delivery” have the same meaning as~~
- 11 ~~provided in subdivision (a) of Section 25741 of the Public~~
- 12 ~~Resources Code.~~

1 ~~(e) “Eligible renewable energy resource” means an electric~~
2 ~~generating facility that meets the definition of “in-state renewable~~
3 ~~electricity generation facility” in Section 25741 of the Public~~
4 ~~Resources Code, subject to the following limitations:~~

5 ~~(1) (A) An existing small hydroelectric generation facility of~~
6 ~~30 megawatts or less shall be eligible only if a retail seller or local~~
7 ~~publicly owned electric utility owned or procured the electricity~~
8 ~~from the facility as of December 31, 2005. A new hydroelectric~~
9 ~~facility is not an eligible renewable energy resource if it will cause~~
10 ~~an adverse impact on instream beneficial uses or cause a change~~
11 ~~in the volume or timing of streamflow pursuant to a current license~~
12 ~~issued pursuant to the Federal Power Act (Chapter 12 (commencing~~
13 ~~with Section 791a) of Title 16 of the United States Code).~~

14 ~~(B) Notwithstanding subparagraph (A), a conduit hydroelectric~~
15 ~~facility of 30 megawatts or less that commenced operation before~~
16 ~~January 1, 2006, is an eligible renewable energy resource. A~~
17 ~~conduit hydroelectric facility of 30 megawatts or less that~~
18 ~~commences operation after December 31, 2005, is an eligible~~
19 ~~renewable energy resource so long as it does not cause an adverse~~
20 ~~impact on instream beneficial uses or cause a change in the volume~~
21 ~~or timing of streamflow pursuant to a current license issued~~
22 ~~pursuant to the Federal Power Act (Chapter 12 (commencing with~~
23 ~~Section 791a) of Title 16 of the United States Code).~~

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

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

37 ~~(e) “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 (f) (1) “Renewable energy credit” means a certificate of proof,
4 issued through the accounting system established by the Energy
5 Commission pursuant to Section 399.13, that one unit of electricity
6 was generated and delivered by an eligible renewable energy
7 resource.

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

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

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

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

23 (2) A community choice aggregator. The commission shall
24 institute a rulemaking to determine the manner in which a
25 community choice aggregator will participate in the renewables
26 portfolio standard program subject to the same terms and conditions
27 applicable to an electrical corporation.

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

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

1 ~~(A) A corporation or person employing cogeneration technology~~
2 ~~or producing electricity consistent with subdivision (b) of Section~~
3 ~~218.~~

4 ~~(B) The Department of Water Resources acting in its capacity~~
5 ~~pursuant to Division 27 (commencing with Section 80000) of the~~
6 ~~Water Code.~~

7 ~~(C) A local publicly owned electric utility.~~

8 ~~SEC. 2.~~

9 *SECTION 1.* Section 399.12.5 of the Public Utilities Code is
10 amended to read:

11 399.12.5. (a) Notwithstanding subdivision (c) of Section
12 399.12, a small hydroelectric generation facility that satisfies the
13 criteria for an eligible renewable energy resource pursuant to
14 Section 399.12 shall not lose its eligibility if efficiency
15 improvements undertaken after January 1, 2008, cause the
16 generating capacity of the facility to exceed 30 megawatts, and
17 the efficiency improvements do not result in an adverse impact on
18 instream beneficial uses or cause a change in the volume or timing
19 of streamflow pursuant to a current license issued pursuant to the
20 Federal Power Act (Chapter 12 (commencing with Section 791a)
21 of Title 16 of the United States Code). The entire generating
22 capacity of the facility shall be eligible.

23 (b) Notwithstanding subdivision (c) of Section 399.12, the
24 incremental increase in the amount of electricity generated from
25 a hydroelectric generation facility as a result of efficiency
26 improvements at the facility, is electricity from an eligible
27 renewable energy resource, without regard to the electrical output
28 of the facility, if all of the following conditions are met:

29 (1) The incremental increase is the result of efficiency
30 improvements from a retrofit that do not result in an adverse impact
31 on instream beneficial uses or cause a change in the volume or
32 timing of streamflow pursuant to a current license issued pursuant
33 to the Federal Power Act (Chapter 12 (commencing with Section
34 791a) of Title 16 of the United States Code).

35 (2) The hydroelectric generation facility meets one of the
36 following certification mechanisms:

37 (A) The hydroelectric generation facility has, within the
38 immediately preceding 15 years, received certification from the
39 State Water Resources Control Board pursuant to Section 401 of
40 the federal Clean Water Act (33 U.S.C. Sec. 1341), or has received

1 certification from a regional board to which the state board has
2 delegated authority to issue certification, unless the facility is not
3 subject to certification because there is no potential for discharge
4 into waters of the United States.

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

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

15 (3) The hydroelectric generation facility is owned by a retail
16 seller or a local publicly owned electric utility, was operational
17 prior to January 1, 2007, the efficiency improvements are initiated
18 on or after January 1, 2008, the efficiency improvements are not
19 the result of routine maintenance activities, as determined by the
20 Energy Commission, and the efficiency improvements were not
21 included in any resource plan sponsored by the facility owner prior
22 to January 1, 2008.

23 (4) All of the incremental increase in electricity resulting from
24 the efficiency improvements are demonstrated to result from a
25 long-term financial commitment by the retail seller or local publicly
26 owned electric utility. For purposes of this paragraph, “long-term
27 financial commitment” means either new ownership investment
28 in the facility by the retail seller or local publicly owned electric
29 utility or a new or renewed contract with a term of 10 or more
30 years, which includes procurement of the incremental generation.

31 (c) The incremental increase in the amount of electricity
32 generated from a hydroelectric generation facility as a result of
33 efficiency improvements at the facility are not eligible for
34 supplemental energy payments pursuant to the Renewable Energy
35 Resources Program (Chapter 8.6 (commencing with Section 25740)
36 of Division 15 of the Public Resources Code), or a successor
37 program.

38 (d) *Notwithstanding subdivision (c) of Section 399.12 and*
39 *subdivisions (a) and (b), a hydroelectric generation facility that*
40 *is an eligible renewable energy resource pursuant to this article*

1 *as of January 1, 2010, shall not lose its eligibility if the facility*
2 *causes a change in the volume or timing of streamflow required*
3 *by license conditions approved pursuant to the Federal Power Act*
4 *(Chapter 12 (commencing with Section 791a) of Title 16 of the*
5 *United States Code) on or after January 1, 2010.*

6 SEC. 2. This act is an urgency statute necessary for the
7 immediate preservation of the public peace, health, or safety within
8 the meaning of Article IV of the Constitution and shall go into
9 immediate effect. The facts constituting the necessity are:

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