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AMENDED IN SENATE AUGUST 22, 2012
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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2196

**Introduced by Assembly Members Chesbro and Gatto
(Coauthor: Assembly Member Skinner)**

February 23, 2012

An act to amend Section 25741 of the Public Resources Code, and to add Section 399.12.6 to the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2196, as amended, Chesbro. Renewable energy resources.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined, while local publicly owned electric utilities, as defined, are under the direction of their governing boards. The existing California Renewables Portfolio Standard Program (RPS program) requires a retail seller of electricity, as defined, and local publicly owned electric utilities to purchase specified minimum quantities of electricity products from eligible renewable energy resources, as defined, for specified compliance periods. The specified minimum quantities of electricity products are based upon a percentage of the utility's total retail sales of electricity in California.

Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to (1) certify eligible renewable energy resources, (2) design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, (3) establish a system for tracking and verifying renewable energy credits (RECs) that verifies the generation and delivery of electricity associated with RECs, and (4) certify the eligibility of RECs associated with deliveries of electricity to a local publicly owned electric utility.

Under existing law the Energy Commission administers the Renewable Energy Resources Program (RER program) with the near-term objective of increasing the quantity of electricity generated by renewable electrical generation facilities, as defined, while protecting system reliability, fostering resource diversity, and obtaining the greatest environmental benefits for California residents, and with the long-term goal of obtaining a fully competitive and self-sustaining supply of electricity generated from renewable resources.

Under existing law, the RPS program's definition of an eligible renewable energy resource incorporates, by reference, the RER program's definition of a renewable electrical generation facility.

This bill would amend the RER program's definition of a renewable electrical generation facility to provide that if the RPS program eligibility of a facility is based on the use of landfill gas, digester gas, or another renewable fuel delivered to the facility through a common carrier pipeline, the transaction for the procurement of that fuel, including the source of the fuel and delivery method, shall meet certain conditions, as specified.

This bill would impose certain requirements with respect to the eligibility of biomethane under the RPS program. The bill would specify that certain biomethane procurement contracts executed by a retail seller or local publicly owned electric utility prior to March 29, 2012, ~~and not subsequently modified~~, count in full toward the RPS program's procurement requirements under the rules applicable to *eligible* renewable energy resources contracts ~~executed prior to June 1, 2010 at the time the procurement contracts were executed~~, if specified conditions are met. The bill would, with respect to contracts executed prior to March 29, 2012, but subsequently extended or modified, as specified, and with respect to contracts executed after that date, impose certain requirements ~~governing the capture, transportation, and use of~~ *on the RPS eligibility of* biomethane, as specified. With respect to biomethane

that is used by an onsite generating facility, and biomethane that is used offsite and delivered to the generating facility through a dedicated pipeline, the bill would specify that the use of that biomethane counts towards the RPS program's procurement requirements if that use satisfies all applicable requirements established by the Energy Commission. With respect to biomethane that is delivered to a generating facility through a common carrier pipeline, the bill would, among other things, require: (1) the biomethane to be injected into a common carrier pipeline that physically flows within California or toward the eligible generating facility; ~~(2) sufficient renewable and environmental attributes of biomethane production and capture to be transferred to the retail seller or local publicly owned utility that uses that biomethane to ensure that any electric generation using the biomethane is carbon neutral, and that those attributes be retired, and not sold, as specified; and (3) the source of biomethane to demonstrate that the reduction in emissions through capture and injection of biomethane causes a direct reduction of air or water pollution in California or alleviates a local nuisance within California that is associated with the emission of odors for which the biomethane was procured under the original contract; (2) that the source of biomethane did not inject biomethane into a common carrier pipeline prior to March 29, 2012, or the source commenced injection of sufficient incremental quantities of biomethane after March 29, 2012, to satisfy the contract requirements; and (3) that the seller or purchaser of the biomethane demonstrates that the capture and injection of biomethane into a common carrier pipeline directly results in at least one of 3 specified environmental benefits to California.~~

The bill would also prohibit specified parties to a biomethane procurement contract from making representations asserting that the procurement contract results in greenhouse gas reductions, as specified, unless the environmental attributes associated with the biomethane are transferred to the purchaser, as specified.

This bill would become operative only if this bill and AB 1900 of the 2011–12 Regular Session are both enacted and become effective on or before January 1, 2013.

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 25741 of the Public Resources Code is
2 amended to read:

3 25741. As used in this chapter, the following terms have the
4 following meaning:

5 (a) “Renewable electrical generation facility” means a facility
6 that meets all of the following criteria:

7 (1) The facility uses biomass, solar thermal, photovoltaic, wind,
8 geothermal, fuel cells using renewable fuels, small hydroelectric
9 generation of 30 megawatts or less, digester gas, municipal solid
10 waste conversion, landfill gas, ocean wave, ocean thermal, or tidal
11 current, and any additions or enhancements to the facility using
12 that technology.

13 (2) The facility satisfies one of the following requirements:

14 (A) The facility is located in the state or near the border of the
15 state with the first point of connection to the transmission network
16 of a balancing authority area primarily located within the state.
17 For purposes of this subparagraph, “balancing authority area” has
18 the same meaning as defined in Section 399.12 of the Public
19 Utilities Code.

20 (B) The facility has its first point of interconnection to the
21 transmission network outside the state, within the Western
22 Electricity Coordinating Council (WECC) service area, and
23 satisfies all of the following requirements:

24 (i) It commences initial commercial operation after January 1,
25 2005.

26 (ii) It will not cause or contribute to any violation of a California
27 environmental quality standard or requirement.

28 (iii) It participates in the accounting system to verify compliance
29 with the renewables portfolio standard once established by the
30 commission pursuant to subdivision (b) of Section 399.25 of the
31 Public Utilities Code.

32 (C) The facility meets the requirements of clauses (ii) and (iii)
33 in subparagraph (B), but does not meet the requirements of clause
34 (i) of subparagraph (B) because it commenced initial operation
35 prior to January 1, 2005, if the facility satisfies either of the
36 following requirements:

37 (i) The electricity is from incremental generation resulting from
38 expansion or repowering of the facility.

1 (ii) Electricity generated by the facility was procured by a retail
2 seller or local publicly owned electric utility as of January 1, 2010.

3 (3) If the facility is outside the United States, it is developed
4 and operated in a manner that is as protective of the environment
5 as a similar facility located in the state.

6 (4) If eligibility of the facility is based on the use of landfill gas,
7 digester gas, or another renewable fuel delivered to the facility
8 through a common carrier pipeline, the transaction for the
9 procurement of that fuel, including the source of the fuel and
10 delivery method, satisfies the requirements of Section 399.12.6 of
11 the Public Utilities Code and is verified pursuant to the accounting
12 system established by the commission pursuant to 399.25 of the
13 Public Utilities Code, or a comparable system, as determined by
14 the commission.

15 (b) “Municipal solid waste conversion,” as used in subdivision
16 (a), means a technology that uses a noncombustion thermal process
17 to convert solid waste to a clean-burning fuel for the purpose of
18 generating electricity, and that meets all of the following criteria:

19 (1) The technology does not use air or oxygen in the conversion
20 process, except ambient air to maintain temperature control.

21 (2) The technology produces no discharges of air contaminants
22 or emissions, including greenhouse gases as defined in Section
23 38505 of the Health and Safety Code.

24 (3) The technology produces no discharges to surface or
25 groundwaters of the state.

26 (4) The technology produces no hazardous wastes.

27 (5) To the maximum extent feasible, the technology removes
28 all recyclable materials and marketable green waste compostable
29 materials from the solid waste stream prior to the conversion
30 process and the owner or operator of the facility certifies that those
31 materials will be recycled or composted.

32 (6) The facility at which the technology is used is in compliance
33 with all applicable laws, regulations, and ordinances.

34 (7) The technology meets any other conditions established by
35 the commission.

36 (8) The facility certifies that any local agency sending solid
37 waste to the facility diverted at least 30 percent of all solid waste
38 it collects through solid waste reduction, recycling, and
39 composting. For purposes of this paragraph, “local agency” means

1 any city, county, or special district, or subdivision thereof, which
2 is authorized to provide solid waste handling services.

3 (c) “Renewable energy public goods charge” means that portion
4 of the nonbypassable system benefits charge required to be
5 collected to fund renewable energy pursuant to the Reliable Electric
6 Service Investments Act (Article 15 (commencing with Section
7 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities
8 Code).

9 (d) “Report” means the report entitled “Investing in Renewable
10 Electricity Generation in California” (June 2001, Publication
11 Number P500-00-022) submitted to the Governor and the
12 Legislature by the commission.

13 (e) “Retail seller” means a “retail seller” as defined in Section
14 399.12 of the Public Utilities Code.

15 SEC. 2. Section 399.12.6 is added to the Public Utilities Code,
16 to read:

17 399.12.6. (a) (1) Any procurement of biomethane delivered
18 through a common carrier pipeline under a contract executed by
19 a retail seller or local publicly owned electric utility and reported
20 to the ~~commission or the~~ Energy Commission prior to March 29,
21 2012, and otherwise eligible under the rules in place as of the date
22 of contract execution shall ~~be subject to both of the following:~~
23 *count toward the procurement requirements established in this*
24 *article, under the rules in place at the time the contract was*
25 *executed, including the Fourth Edition of the Energy Commission’s*
26 *Renewables Portfolio Standard Eligibility Guidebook, provided*
27 *that those rules shall apply only to sources that are producing*
28 *biomethane and injecting it into a common carrier pipeline on or*
29 *before April 1, 2014.*

30 ~~(1) All quantities of biomethane delivered under the terms of~~
31 ~~the original contract shall count in full toward the procurement~~
32 ~~requirements established in this article in the same manner as a~~
33 ~~renewable energy resources contract originally executed prior to~~
34 ~~June 1, 2010, pursuant to subdivision (d) of Section 399.16, if the~~
35 ~~biomethane is produced by a source that is producing biomethane~~
36 ~~and injecting it into a common carrier pipeline on or before January~~
37 ~~1, 2014, and the biomethane source is specifically identified in the~~
38 ~~original procurement contract. The product content requirements~~
39 ~~of Section 399.16 shall not apply to any quantities of biomethane~~
40 ~~associated with contracts executed prior to March 29, 2012.~~

1 ~~(2) Any quantities of biomethane delivered under the terms of~~
2 ~~a procurement contract that are associated with an extension of~~
3 ~~the term of the contract, an increased quantity of biomethane~~
4 ~~beyond the base quantity specified in the contract, including any~~
5 ~~optional quantities that can be exercised at the discretion of the~~
6 ~~buyer from any source of biomethane identified in the contract or~~
7 ~~any change in the source or sources of biomethane specifically~~
8 ~~identified in the original contract, or any source not producing~~
9 ~~biomethane and injecting it into a common carrier pipeline on or~~
10 ~~before January 1, 2014, shall count toward the procurement~~
11 ~~requirements established in this article only as provided in~~
12 ~~paragraph (b).~~

13 *(2) The eligibility requirements of subdivision (b) shall apply*
14 *beginning March 29, 2012, to any quantities of biomethane*
15 *associated with any of the following:*

16 *(A) An extension of the term of the original contract.*

17 *(B) Any quantity of biomethane that exceeds the quantities of*
18 *biomethane specified in the original contract.*

19 *(C) Any optional quantities of biomethane that can be exercised*
20 *at the discretion of the buyer.*

21 *(D) Any change in the source or sources of biomethane identified*
22 *in the original contract or the original application for certification*
23 *submitted to the Energy Commission.*

24 *(E) Any quantity of biomethane from a source not producing*
25 *and capturing biomethane and injecting it into a common carrier*
26 *pipeline on or before April 1, 2014.*

27 *(F) The conditions of this paragraph shall apply beginning*
28 *March 29, 2012.*

29 (b) For contracts initially executed on or after March 29, 2012,
30 or for quantities of biomethane associated with contract
31 amendments executed *on or* after March 29, 2012, the use of
32 biomethane by a ~~renewable electrical~~ generating facility shall not
33 qualify as an eligible renewable energy resource unless it satisfies
34 all applicable requirements established by the Energy Commission
35 and meets any of the following requirements:

36 (1) The biomethane is used by an onsite generating facility.

37 (2) The biomethane is used by an offsite generating facility and
38 delivered to the generating facility through a dedicated pipeline.

1 (3) The biomethane is delivered to a generating facility through
2 a common carrier pipeline and meets all of the following
3 requirements:

4 (A) The source of biomethane injects the biomethane into a
5 common carrier pipeline that physically flows within California
6 or toward the eligible generating facility *for which the biomethane*
7 *was procured under the original contract.*

8 (B) The source of biomethane did not inject biomethane into a
9 common carrier pipeline prior to March 29, 2012, or the source
10 commenced injection of sufficient incremental quantities of
11 biomethane after March 29, 2012, to satisfy the contract
12 requirements.

13 (C) *The seller or purchaser of the biomethane demonstrates*
14 *that the capture and injection of biomethane into a common carrier*
15 *pipeline directly results in at least one of the following*
16 *environmental benefits to California:*

17 (i) *The reduction or avoidance of the emission of any criteria*
18 *air pollutant in California.*

19 (ii) *The reduction or avoidance of pollutants that could have*
20 *an adverse impact on waters of the state.*

21 (iii) *The alleviation of a local nuisance within California that*
22 *is associated with the emission of odors.*

23 ~~(C) Sufficient~~

24 (c) *For all electricity products generated using biomethane that*
25 *are credited toward the renewables portfolio standard procurement*
26 *obligations established pursuant to this article, sufficient renewable*
27 *and environmental attributes of biomethane production and capture*
28 *are shall be transferred to the retail seller or local publicly owned*
29 *electric utility that uses that biomethane to ensure that any electric*
30 *generation using the biomethane is carbon neutral. For any*
31 *biomethane credited towards the renewables portfolio standard*
32 *obligations established pursuant to this article, these attributes*
33 *shall be retired and shall not be resold. there are zero net emissions*
34 *associated with the production of electricity from the generating*
35 *facility using the biomethane. The provisions of this subdivision*
36 *shall be applied in a manner consistent with the definition of*
37 *“green attributes” as specified by the commission in Decision*
38 *08-08-028, Decision on Definition and Attributes of Renewable*
39 *Energy Credits for Compliance with the California Renewables*

1 *Portfolio Standard (August 21, 2008), as may be modified by*
2 *subsequent decision of the commission.*

3 ~~(D)~~

4 (d) All sellers and purchasers of biomethane *shall* comply with
5 a system for tracking and verifying the use of biomethane, as
6 established by the Energy Commission, that is equivalent to the
7 system ~~provided in~~ *required by* subdivision (c) of Section 399.25.

8 ~~(E) The source of biomethane demonstrates that the reduction~~
9 ~~in emissions through capture and injection of biomethane causes~~
10 ~~a direct reduction of air or water pollution in California or alleviates~~
11 ~~a local nuisance within California that is associated with the~~
12 ~~emission of odors.~~

13 ~~(e)~~

14 (e) For contracts initially executed on or after March 29, 2012,
15 or for quantities of biomethane associated with contract
16 amendments executed after March 29, 2012, the use of biomethane
17 shall be assigned to the appropriate portfolio content category
18 based on the application of the criteria in subdivision (b) of Section
19 399.16 to the procurement of electricity by the retail seller or local
20 publicly owned electric utility from the ~~renewable electrical~~
21 generating facility consuming the biomethane.

22 ~~(f)~~

23 (f) A retail seller, local publicly owned electric utility, or an
24 intermediary party to a biomethane procurement contract shall not
25 make a marketing, regulatory, or retail claim that asserts that a
26 biomethane procurement contract to which that entity was a party
27 resulted, or will result, in greenhouse gas reductions *related to the*
28 *destruction of methane if the capture and destruction is required*
29 *by law. If the capture and destruction of the biomethane is not*
30 *required by law, a retail seller, local publicly owned electric utility,*
31 *or an intermediary party to a biomethane procurement contract*
32 *shall not make a marketing, regulatory, or retail claim that asserts*
33 *that a biomethane procurement contract to which that entity was*
34 *a party resulted, or will result, in greenhouse gas reductions*
35 *related to the destruction of methane, unless the environmental*
36 *attributes associated with the ~~production and~~ capture and*
37 *destruction of the biomethane pursuant to that contract are*
38 *transferred to the retail seller or publicly owned electric utility that*
39 *purchased that biomethane and retired on behalf of the retail*
40 *customers consuming the electricity associated with the use of that*

1 biomethane, *or unless the biomethane procurement contract*
2 *prohibits the source of biomethane from separately marketing the*
3 *environmental attributes associated with the capture and*
4 *destruction of the biomethane sold pursuant to that contract. These*
5 *attributes shall be retired and may not be resold.*

6 (e)

7 (g) For the purposes of this section, “biomethane” means landfill
8 gas or digester gas, consistent with Section 25741 of the Public
9 Resources Code.

10 (f)

11 (h) If any provision of this section or the application of any
12 provision of this section is held invalid, biomethane delivered
13 through a common carrier pipeline pursuant to a contract executed
14 within 180 days of, or at any time subsequent to, the invalidation
15 of that provision shall not qualify as an eligible renewable energy
16 resource.

17 SEC. 3. This act shall become operative only if this act and
18 Assembly Bill 1900 of the 2011–12 Regular Session are both
19 enacted and become effective before January 1, 2013.