SENATE BILL No. 771

Introduced by Senator Kehoe
(Coauthors: Senators Blakeslee, Correa, and Harman)

February 18, 2011

An act to amend Section 25744 of the Public Resources Code, and to amend Sections 379.6 and 399.20 of the Public Utilities Code, relating to energy, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 771, as introduced, Kehoe. Renewable energy resources.

(1) Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations, as defined. Existing law requires the PUC to require the state's 3 largest electrical corporations, Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison, to identify a separate electrical rate component to fund programs that enhance system reliability and provide in-state benefits. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. Existing PUC resolutions refer to the nonbypassable rate component as a "public goods charge." The public goods charge moneys are collected to support cost-effective energy efficiency and conservation activities, public interest research and development not adequately provided by competitive and regulated markets, and renewable energy resources. Existing law establishes the Renewable Resource Trust Fund as a fund that is continuously appropriated, with certain exceptions for administrative expenses, in the State Treasury, and requires that certain moneys collected to support renewable energy resources through the public goods charge are deposited into the fund and authorizes the Energy Commission to expend the moneys pursuant to the Renewable Energy Resources Program.

Existing law requires that 79% of the moneys collected pursuant to the renewable energy public goods charge that are deposited into the fund be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications. These moneys are deposited into the Emerging Renewable Resources Account within the Renewable Resource Trust Fund.

This bill would include as eligible electricity generating systems that may receive incentives pursuant to the Emerging Renewable Resources Account, continuous clean renewable energy resources, as defined, that utilize waste gases from landfills, digesters, or wastewater treatment facilities to generate electricity. By expanding the uses to which moneys that are in a continuously appropriated account may be used, the bill would make an appropriation.

Existing law limits the eligible electricity generating systems that may receive incentives pursuant to the Emerging Renewable Resources Account to those systems that are intended primarily to offset part or all of the consumer's own electricity demand.

This bill would establish an exception to this requirement for fuel cells and continuous clean renewable energy resources that utilize waste gases from landfills, digesters, or wastewater treatment facilities to generate electricity. The bill would instead provide that generation that involves the onsite or dedicated capture, treatment, and conversion of waste gas to generate electricity utilizing fuel cells or a continuous clean renewable energy resource may be sized to capture the energy potential of the source of waste gas and need not be sized to offset part or all of the customer's load. For these purposes, a dedicated use of waste gas occurs when the waste gas is transported from the site where the gas is captured to the generation site using a dedicated pipeline that is not used to transport natural gas.

(2) Existing law requires every electrical corporation to file a standard tariff with the commission for electricity generated by an electric generation facility, as defined, that qualifies for the tariff, is owned and operated by a retail customer of the electrical corporation, and is located within the service territory of, and developed to sell electricity to, the electrical corporation. Existing law requires that, in order to qualify for the tariff, the electric generation facility: (A) have an effective capacity of not more than 3 megawatts, subject to the authority of the commission to reduce this megawatt limitation, (B) be interconnected and operate in parallel with the electric transmission and distribution grid, (C) 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 (D) meet the definition of an eligible renewable energy resource under the California renewables portfolio standard program.

This bill would state that an eligible renewable energy resource includes a continuous clean renewable energy resource that utilizes waste gases from landfills, digesters, or wastewater treatment facilities to generate electricity.

(3) Existing law requires the PUC, in consultation with the Energy Commission, to administer, until January 1, 2016, a self-generation incentive program for distributed generation resources and to separately administer solar technologies pursuant to the California Solar Initiative. Existing law limits eligibility for incentives to distributed energy resources that the PUC, in consultation with the State Air Resources Board (state board), determines will achieve reductions in emissions of greenhouse gases pursuant to the California Global Warming Solutions Act of 2006.

This bill would expressly authorize continuous clean renewable energy resources that utilize waste gases from landfills, digesters, or wastewater treatment facilities to generate electricity to be eligible to participate in the program.

Vote: ⅔. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 25744 of the Public Resources Code is amended to read:

25744. (a) Seventy-nine percent of the money collected pursuant to the renewable energy public goods charge shall be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications.

(b) Any funds used for emerging technologies pursuant to this section shall be expended in accordance with this chapter, subject to all of the following requirements:

(1) Funding for emerging technologies shall be provided through a competitive, market-based process that is in place for a period of not less than five years, and is structured to allow eligible

emerging technology manufacturers and suppliers to anticipate and plan for increased sale and installation volumes over the life of the program.

(2) The program shall provide monetary rebates, buydowns, or equivalent incentives, subject to paragraph (3), to purchasers, lessees, lessors, or sellers of eligible electricity generating systems. Incentives shall benefit the end-use consumer of renewable generation by directly and exclusively reducing the purchase or lease cost of the eligible system, or the cost of electricity produced by the eligible system. Incentives shall be issued on the basis of the rated electrical generating capacity of the system measured in watts, or the amount of electricity production of the system, measured in kilowatthours. Incentives shall be limited to a maximum percentage of the system price, as determined by the commission. The commission may establish different incentive levels for systems based on technology type and system size, and may provide different incentive levels for systems used in conjunction with energy-efficiency measures.

(3) *(A) Except for generation that involves the onsite or dedicated capture, treatment, and clean conversion of waste gas to electricity as described in subparagraph (C), eligible* ~~Eligible distributed emerging technologies are fuel cell technologies that utilize renewable fuels, including fuel cell technologies with an emission profile equivalent or better than the State Air Resources Board 2007 standard, and that serve as backup generation for emergency, safety, or telecommunications systems. Eligible renewable fuels may include wind turbines of not more than 50 kilowatts rated electrical generating capacity per customer site and other distributed renewable emerging technologies that meet the emerging technology eligibility criteria established by the commission and are not eligible for rebates, buydowns, or similar incentives from any other commission or Public Utilities Commission program. Eligible~~ electricity generating systems are intended primarily to offset part or all of the consumer's own electricity demand, including systems that are used as backup power for emergency, safety, or telecommunications, and shall not be owned by local publicly owned electric utilities, nor be located at a customer site that is not receiving distribution service from an electrical corporation that is subject to the renewable energy public goods charge and contributing funds to support

programs under this chapter. ~~All~~ *Eligible distributed emerging technologies shall have a rated generation capacity of not more than 350 kilowatts and include all of the following:*

(i) Wind turbines.

(ii) Fuel cell technologies that use renewable fuels and that have an emissions profile equivalent or better than the waste gas emission standards adopted by the State Air Resources Board that take effect on January 1, 2013 (subdivisions (c) and (d) of Section 94203 of the California Code of Regulations).

(iii) Continuous clean renewable energy resources that utilize waste gases from landfills, digesters, or wastewater treatment facilities to generate electricity. For these purposes, a generating system is continuous if it is capable of producing electricity for 8,000 hours a year. For these purposes, a generating system is clean if it has an emissions profile equivalent or better than the waste gas emission standards adopted by the State Air Resources Board that take effect on January 1, 2013 (subdivisions (c) and (d) of Section 94203 of the California Code of Regulations).

(iv) Other distributed renewable emerging technologies that meet the emerging technology eligibility criteria established by the commission.

(B) Technologies that are eligible for rebates, buydowns, or similar incentives from any other commission or Public Utilities Commission program shall not be eligible for funding under this section.

(C) Generation that involves the onsite or dedicated capture, treatment, and conversion of waste gas to generate electricity utilizing fuel cells or a continuous clean renewable energy resource may be sized to capture the energy potential of the source of waste gas and need not be sized to offset part or all of the customer's load. For these purposes, a dedicated use of waste gas occurs when the waste gas is transported from the site where the gas is captured to the generation site using a dedicated pipeline that is not used to transport natural gas.

(D) All eligible electricity generating system components shall be new and unused, shall not have been previously placed in service in any other location or for any other application, and shall have a warranty of not less than five years to protect against defects and undue degradation of electrical generation output. ~~Systems~~

(E) Except for generation that involves the onsite or dedicated capture, treatment, and clean conversion of waste gas to electricity as described in subparagraph (C), eligible electricity generating systems and their fuel resources shall be located on the same premises of the end-use consumer where the consumer's own electricity demand is located, and all eligible electricity generating systems shall be connected to the utility grid, unless the system purpose is for backup generation used in emergency, safety, or telecommunications in California. ~~The~~

(F) The commission may require eligible electricity generating systems to have meters in place to monitor and measure a system's performance and generation. Only systems that will be operated in compliance with applicable law and the rules of the Public Utilities Commission shall be eligible for funding.

(4) The commission shall limit the amount of funds available for a system or project of multiple systems and reduce the level of funding for a system or project of multiple systems that has received, or may be eligible to receive, any government or utility funds, incentives, or credit.

(5) In awarding funding, the commission may provide preference to systems that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(6) In awarding funding, the commission shall develop and implement eligibility criteria and a system that provides preference to systems based upon system performance~~, taking into account factors, including shading, insulation levels, and installation orientation~~.

(7) At least once annually, the commission shall publish and make available to the public the balance of funds available for emerging renewable energy resources for rebates, buydowns, and other incentives for the purchase of these resources.

(c) Notwithstanding Section 27540.5, the commission may expend, until December 31, 2008, up to sixty million dollars ($60,000,000) of the funding allocated to the Renewable Resources Trust Fund for the program established in this section, subject to the repayment requirements of subdivision (f) of Section 25751.

(d) Any funds for photovoltaic or solar thermal electric technologies shall be awarded in compliance with Chapter 8.8 (commencing with Section 25780), and not with this section.

SEC. 2. Section 379.6 of the Public Utilities Code is amended to read:

379.6. (a) (1) The commission, in consultation with the Energy Commission, may authorize the annual collection of not more than the amount authorized for the self-generation incentive program in the 2008 calendar year, through December 31, 2011. The commission shall require the administration of the program for distributed energy resources originally established pursuant to Chapter 329 of the Statutes of 2000 until January 1, 2016. On January 1, 2016, the commission shall provide repayment of all unallocated funds collected pursuant to this section to reduce ratepayer costs.

(2) The commission shall administer solar technologies separately, pursuant to the California Solar Initiative adopted by the commission in ~~Decision~~ *Decisions 05-12-044 and* 06-01-024, *as modified by Article 1 (commencing with Section 2851) of Chapter 9 of Part 2 of this code, and Chapter 8.8 (commencing with Section 25780) of Division 15 of the Public Resources Code*.

(b) Eligibility for incentives under the program shall be limited to distributed energy resources that the commission, in consultation with the State Air Resources Board, determines will achieve reductions of greenhouse gas emissions pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code). *Eligible distributed energy resources may include continuous clean renewable energy resources that use waste gases from landfills, digesters, or wastewater treatment facilities to generate electricity. For these purposes, a generating system is continuous if it is capable of producing electricity for 8,000 hours a year. For these purposes, a generating system is clean if it has an emissions profile equivalent or better than the waste gas emission standards adopted by the State Air Resources Board that take effect on January 1, 2013 (subdivisions (c) and (d) of Section 94203 of the California Code of Regulations).*

(c) Eligibility for the funding of any combustion-operated distributed generation projects using fossil fuel is subject to all of the following conditions:

(1) An oxides of nitrogen (NO_x) emissions rate standard of 0.07 pounds per megawatthour and a minimum efficiency of 60 percent, or any other NO_x emissions rate and minimum efficiency standard

adopted by the State Air Resources Board. A minimum efficiency of 60 percent shall be measured as useful energy output divided by fuel input. The efficiency determination shall be based on 100 percent load.

(2) Combined heat and power units that meet the 60-percent efficiency standard may take a credit to meet the applicable NO_x emissions standard of 0.07 pounds per megawatthour. Credit shall be at the rate of one megawatthour for each 3.4 million British thermal units (Btus) of heat recovered.

(3) The customer receiving incentives shall adequately maintain and service the combined heat and power units so that during operation, the system continues to meet or exceed the efficiency and emissions standards established pursuant to paragraphs (1) and (2).

(4) Notwithstanding paragraph (1), a project that does not meet the applicable NO_x emissions standard is eligible if it meets both of the following requirements:

(A) The project operates solely on waste gas. The commission shall require a customer that applies for an incentive pursuant to this paragraph to provide an affidavit or other form of proof, that specifies that the project shall be operated solely on waste gas. Incentives awarded pursuant to this paragraph shall be subject to refund and shall be refunded by the recipient to the extent the project does not operate on waste gas. As used in this paragraph, "waste gas" means natural gas that is generated as a byproduct of petroleum production operations and is not eligible for delivery to the utility pipeline system.

(B) The air quality management district or air pollution control district, in issuing a permit to operate the project, determines that operation of the project will produce an onsite net air emissions benefit, compared to permitted onsite emissions if the project does not operate. The commission shall require the customer to secure the permit prior to receiving incentives.

(d) In determining the eligibility for the self-generation incentive program, minimum system efficiency shall be determined either by calculating electrical and process heat efficiency as set forth in Section 216.6, or by calculating overall electrical efficiency.

(e) In administering the self-generation incentive program, the commission may adjust the amount of rebates and evaluate other public policy interests, including, but not limited to, ratepayers,

and energy efficiency, peak load reduction, load management, and environmental interests.

(f) The commission shall ensure that distributed generation resources are made available in the program for all ratepayers.

(g) (1) In administering the self-generation incentive program, the commission shall provide an additional incentive of 20 percent from existing program funds for the installation of eligible distributed generation resources from a California supplier.

(2) "California supplier" as used in this subdivision means any sole proprietorship, partnership, joint venture, corporation, or other business entity that manufactures eligible distributed generation resources in California and that meets either of the following criteria:

(A) The owners or policymaking officers are domiciled in California and the permanent principal office, or place of business from which the supplier's trade is directed or managed, is located in California.

(B) A business or corporation, including those owned by, or under common control of, a corporation, that meets all of the following criteria continuously during the five years prior to providing eligible distributed generation resources to a self-generation incentive program recipient:

(i) Owns and operates a manufacturing facility located in California that builds or manufactures eligible distributed generation resources.

(ii) Is licensed by the state to conduct business within the state.

(iii) Employs California residents for work within the state.

(3) For purposes of qualifying as a California supplier, a distribution or sales management office or facility does not qualify as a manufacturing facility.

(h) The costs of the program adopted and implemented pursuant to this section shall not be recovered from customers participating in the California Alternate Rates for Energy (CARE) program.

SEC. 3. Section 399.20 of the Public Utilities Code is amended to read:

399.20. (a) It is the policy of this state and the intent of the Legislature to encourage electrical generation from eligible renewable energy resources.

(b) As used in this section, "electric generation facility" means an electric generation facility located within the service territory

of, and developed to sell electricity to, an electrical corporation that meets all of the following criteria:

(1) Has an effective capacity of not more than three megawatts.

(2) Is interconnected and operates in parallel with the electrical transmission and distribution grid.

(3) Is strategically located and interconnected to the electrical transmission and distribution grid in a manner that optimizes the deliverability of electricity generated at the facility to load centers.

(4) Is an eligible renewable energy resource. *An eligible renewable energy resource includes a continuous clean renewable energy resource that use waste gases from landfills, digesters, or wastewater treatment facilities to generate electricity. For these purposes, a generating system is continuous if it is capable of producing electricity for 8,000 hours a year. For these purposes, a generating system is clean if it has an emissions profile equivalent or better than the waste gas emission standards adopted by the State Air Resources Board that take effect on January 1, 2013 (subdivisions (c) and (d) of Section 94203 of the California Code of Regulations).*

(c) Every electrical corporation shall file with the commission a standard tariff for electricity purchased from an electric generation facility. The commission may modify or adjust the requirements of this section for any electrical corporation with less than 100,000 service connections, as individual circumstances merit.

(d) (1) The tariff shall provide for payment for every kilowatthour of electricity purchased from an electric generation facility for a period of 10, 15, or 20 years, as authorized by the commission. The payment shall be the market price determined by the commission pursuant to Section 399.15 and shall include all current and anticipated environmental compliance costs, including, but not limited to, mitigation of emissions of greenhouse gases and air pollution offsets associated with the operation of new generating facilities in the local air pollution control or air quality management district where the electric generation facility is located.

(2) The commission may adjust the payment rate to reflect the value of every kilowatthour of electricity generated on a time-of-delivery basis.

(3) The commission shall ensure, with respect to rates and charges, that ratepayers that do not receive service pursuant to the tariff are indifferent to whether a ratepayer with an electric generation facility receives service pursuant to the tariff.

(e) An electrical corporation shall provide expedited interconnection procedures to an electric generation facility located on a distribution circuit that generates electricity at a time and in a manner so as to offset the peak demand on the distribution circuit, if the electrical corporation determines that the electric generation facility will not adversely affect the distribution grid. The commission shall consider and may establish a value for an electric generation facility located on a distribution circuit that generates electricity at a time and in a manner so as to offset the peak demand on the distribution circuit.

(f) An electrical corporation shall make the tariff available to the owner or operator of an electric generation facility within the service territory of the electrical corporation, upon request, on a first-come-first-served basis, until the electrical corporation meets its proportionate share of a statewide cap of 750 megawatts cumulative rated generation capacity served under this section and Section 387.6. The proportionate share shall be calculated based on the ratio of the electrical corporation's peak demand compared to the total statewide peak demand.

(g) The electrical corporation may make the terms of the tariff available to owners and operators of an electric generation facility in the form of a standard contract subject to commission approval.

(h) Every kilowatthour of electricity purchased from an electric generation facility shall count toward meeting the electrical corporation's renewables portfolio standard annual procurement targets for purposes of paragraph (1) of subdivision (b) of Section 399.15.

(i) The physical generating capacity of an electric generation facility shall count toward the electrical corporation's resource adequacy requirement for purposes of Section 380.

(j) (1) The commission shall establish performance standards for any electric generation facility that has a capacity greater than one megawatt to ensure that those facilities are constructed, operated, and maintained to generate the expected annual net production of electricity and do not impact system reliability.

(2) The commission may reduce the three megawatt capacity limitation of paragraph (1) of subdivision (b) if the commission finds that a reduced capacity limitation is necessary to maintain system reliability within that electrical corporation's service territory.

(k) (1) Any owner or operator of an electric generation facility that received ratepayer-funded incentives in accordance with Section 379.6 of this code, or with Section 25782 of the Public Resources Code, and participated in a net metering program pursuant to Sections 2827, 2827.9, and 2827.10 of this code prior to January 1, 2010, shall be eligible for a tariff or standard contract filed by an electrical corporation pursuant to this section.

(2) In establishing the tariffs or standard contracts pursuant to this section, the commission shall consider ratepayer-funded incentive payments previously received by the generation facility pursuant to Section 379.6 of this code or Section 25782 of the Public Resources Code. The commission shall require reimbursement of any funds received from these incentive programs to an electric generation facility, in order for that facility to be eligible for a tariff or standard contract filed by an electrical corporation pursuant to this section, unless the commission determines ratepayers have received sufficient value from the incentives provided to the facility based on how long the project has been in operation and the amount of renewable electricity previously generated by the facility.

(3) A customer that receives service under a tariff or contract approved by the commission pursuant to this section is not eligible to participate in any net metering program.

(*l*) An owner or operator of an electric generation facility electing to receive service under a tariff or contract approved by the commission shall continue to receive service under the tariff or contract until either of the following occurs:

(1) The owner or operator of an electric generation facility no longer meets the eligibility requirements for receiving service pursuant to the tariff or contract.

(2) The period of service established by the commission pursuant to subdivision (d) is completed.

(m) Within 10 days of receipt of a request for a tariff pursuant to this section from an owner or operator of an electric generation facility, the electrical corporation that receives the request shall

post a copy of the request on its Internet Web site. The information posted on the Internet Web site shall include the name of the city in which the facility is located, but information that is proprietary and confidential, including, but not limited to, address information beyond the name of the city in which the facility is located, shall be redacted.

(n) An electrical corporation may deny a tariff request pursuant to this section if the electrical corporation makes any of the following findings:

(1) The electric generation facility does not meet the requirements of this section.

(2) The transmission or distribution grid that would serve as the point of interconnection is inadequate.

(3) The electric generation facility does not meet all applicable state and local laws and building standards, and utility interconnection requirements.

(4) The aggregate of all electric generating facilities on a distribution circuit would adversely impact utility operation and load restoration efforts of the distribution system.

(o) Upon receiving a notice of denial from an electrical corporation, the owner or operator of the electric generation facility denied a tariff pursuant to this section shall have the right to appeal that decision to the commission.

(p) In order to ensure the safety and reliability of electric generation facilities, the owner of an electric generation facility receiving a tariff pursuant to this section shall provide an inspection and maintenance report to the electrical corporation at least once every other year. The inspection and maintenance report shall be prepared at the owner's or operator's expense by a ~~California-licensed~~ *California licensed* contractor who is not the owner or operator of the electric generation facility. A ~~California-licensed~~ *California licensed* electrician shall perform the inspection of the electrical portion of the generation facility.

(q) The contract between the electric generation facility receiving the tariff and the electrical corporation shall contain provisions that ensure that construction of the electric generating facility complies with all applicable state and local laws and building standards, and utility interconnection requirements.

(r) (1) All construction and installation of facilities of the electrical corporation, including at the point of the output meter

or at the transmission or distribution grid, shall be performed only by that electrical corporation.

(2) All interconnection facilities installed on the electrical corporation's side of the transfer point for electricity between the electrical corporation and the electrical conductors of the electric generation facility shall be owned, operated, and maintained only by the electrical corporation. The ownership, installation, operation, reading, and testing of revenue metering equipment for electric generating facilities shall only be performed by the electrical corporation.

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