

AMENDED IN SENATE APRIL 4, 2013

SENATE BILL

No. 767

Introduced by Senator Lieu

February 22, 2013

An act to amend Section ~~216~~ 399.12.6 of the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 767, as amended, Lieu. ~~Public utilities.~~ *utilities: California Renewables Portfolio Standard Program: biomethane.*

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined. The existing California Renewables Portfolio Standard Program (RPS program) requires a retail seller of electricity, as defined, and a local publicly owned electric utility to purchase specified minimum quantities of electricity products from eligible renewable energy resources, as defined, for specified compliance periods. Existing law requires the procurement of biomethane delivered through a common carrier pipeline under a contract, as provided, to count toward the procurement requirements established by the RPS program, under rules in place at the time the contract was executed, provided that the rules apply only to sources that are producing biomethane and injecting it into a common carrier pipeline on or before April 1, 2014.

This bill would amend that date to April 1, 2015.

~~Under existing law, the Public Utilities Commission has regulatory authority over public utilities and can establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. The Public Utilities Act provides the~~

~~commission with specified regulatory authorities over public utilities. The act defines the term “public utilities” for the purposes of the act.~~

~~This bill would make technical, nonsubstantive changes to that definition.~~

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

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

1 SECTION 1. Section 399.12.6 of the Public Utilities Code is
2 amended to read:

3 399.12.6. (a) (1) Any procurement of biomethane delivered
4 through a common carrier pipeline under a contract executed by
5 a retail seller or local publicly owned electric utility and reported
6 to the Energy Commission prior to March 29, 2012, and otherwise
7 eligible under the rules in place as of the date of contract execution
8 shall count toward the procurement requirements established in
9 this article, under the rules in place at the time the contract was
10 executed, including the Fourth Edition of the Energy Commission’s
11 Renewables Portfolio Standard Eligibility Guidebook, provided
12 that those rules shall apply only to sources that are producing
13 biomethane and injecting it into a common carrier pipeline on or
14 before April 1, ~~2014~~ 2015.

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

- 18 (A) An extension of the term of the original contract.
- 19 (B) Any quantity of biomethane that exceeds the quantities of
20 biomethane specified in the original contract.
- 21 (C) Any optional quantities of biomethane that can be exercised
22 at the discretion of the buyer.
- 23 (D) Any change in the source or sources of biomethane
24 identified in the original contract or the original application for
25 certification submitted to the Energy Commission.
- 26 (E) Any quantity of biomethane from a source not producing
27 and capturing biomethane and injecting it into a common carrier
28 pipeline on or before April 1, ~~2014~~ 2015.
- 29 (F) The conditions of this paragraph shall apply beginning
30 March 29, 2012.

1 (b) For contracts initially executed on or after March 29, 2012,
2 or for quantities of biomethane associated with contract
3 amendments executed on or after March 29, 2012, the use of
4 biomethane by a generating facility shall not qualify as an eligible
5 renewable energy resource unless it satisfies all applicable
6 requirements established by the Energy Commission and meets
7 any of the following requirements:

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

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

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

14 (A) The source of biomethane injects the biomethane into a
15 common carrier pipeline that physically flows within California
16 or toward the generating facility for which the biomethane was
17 procured under the original contract.

18 (B) The source of biomethane did not inject biomethane into a
19 common carrier pipeline prior to March 29, 2012, or the source
20 commenced injection of sufficient incremental quantities of
21 biomethane after March 29, 2012, to satisfy the contract
22 requirements.

23 (C) The seller or purchaser of the biomethane demonstrates that
24 the capture and injection of biomethane into a common carrier
25 pipeline directly results in at least one of the following
26 environmental benefits to California:

27 (i) The reduction or avoidance of the emission of any criteria
28 air pollutant in California.

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

31 (iii) The alleviation of a local nuisance within California that
32 is associated with the emission of odors.

33 (c) For all electricity products generated using biomethane that
34 are credited toward the renewables portfolio standard procurement
35 obligations established pursuant to this article, sufficient renewable
36 and environmental attributes of biomethane production and capture
37 shall be transferred to the retail seller or local publicly owned
38 electric utility that uses that biomethane to ensure that there are
39 zero net emissions associated with the production of electricity
40 from the generating facility using the biomethane. The provisions

1 of this subdivision shall be applied in a manner consistent with
2 the definition of “green attributes” as specified by the commission
3 in Decision 08-08-028, Decision on Definition and Attributes of
4 Renewable Energy Credits for Compliance with the California
5 Renewables Portfolio Standard (August 21, 2008), as may be
6 modified by subsequent decision of the commission.

7 (d) All sellers and purchasers of biomethane shall comply with
8 a system for tracking and verifying the use of biomethane, as
9 established by the Energy Commission, that is equivalent to the
10 system required by subdivision (c) of Section 399.25.

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

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

1 pursuant to that contract. These attributes shall be retired and may
2 not be resold.

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

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

12 ~~SECTION 1.—Section 216 of the Public Utilities Code is~~
13 ~~amended to read:~~

14 ~~216. (a) “Public utility” includes every common carrier, toll~~
15 ~~bridge corporation, pipeline corporation, gas corporation, electrical~~
16 ~~corporation, telephone corporation, telegraph corporation, water~~
17 ~~corporation, sewer system corporation, and heat corporation, where~~
18 ~~the service is performed for, or the commodity is delivered to, the~~
19 ~~public or any portion thereof.~~

20 ~~(b) Whenever a common carrier, toll bridge corporation, pipeline~~
21 ~~corporation, gas corporation, electrical corporation, telephone~~
22 ~~corporation, telegraph corporation, water corporation, sewer system~~
23 ~~corporation, or heat corporation performs a service for, or delivers~~
24 ~~a commodity to, the public or any portion thereof for which any~~
25 ~~compensation or payment whatsoever is received, that common~~
26 ~~carrier, toll bridge corporation, pipeline corporation, gas~~
27 ~~corporation, electrical corporation, telephone corporation, telegraph~~
28 ~~corporation, water corporation, sewer system corporation, or heat~~
29 ~~corporation, is a public utility subject to the jurisdiction, control,~~
30 ~~and regulation of the commission and this part.~~

31 ~~(c) When a person or corporation performs a service for, or~~
32 ~~delivers a commodity to, any person, private corporation,~~
33 ~~municipality, or other political subdivision of the state, that in turn~~
34 ~~either directly or indirectly, mediately or immediately, performs~~
35 ~~that service for, or delivers that commodity to, the public or any~~
36 ~~portion thereof, that person or corporation is a public utility subject~~
37 ~~to the jurisdiction, control, and regulation of the commission and~~
38 ~~this part.~~

39 ~~(d) Ownership or operation of a facility that employs~~
40 ~~cogeneration technology or produces power from other than a~~

1 conventional power source or the ownership or operation of a
2 facility which employs landfill gas technology does not make a
3 corporation or person a public utility within the meaning of this
4 section solely because of the ownership or operation of that facility.

5 (e) A corporation or person engaged directly or indirectly in
6 developing, producing, transmitting, distributing, delivering, or
7 selling any form of heat derived from geothermal or solar resources
8 or from cogeneration technology to a privately owned or publicly
9 owned public utility, or to the public or any portion thereof, is not
10 a public utility within the meaning of this section solely by reason
11 of engaging in any of those activities.

12 (f) The ownership or operation of a facility that sells compressed
13 natural gas at retail to the public for use only as a motor vehicle
14 fuel, and the selling of compressed natural gas at retail from that
15 facility to the public for use only as a motor vehicle fuel, does not
16 make the corporation or person a public utility within the meaning
17 of this section solely because of that ownership, operation, or sale.

18 (g) Ownership or operation of a facility that is an exempt
19 wholesale generator, as defined in the Public Utility Holding
20 Company Act of 2005 (42 U.S.C. Sec. 16451(6)), does not make
21 a corporation or person a public utility within the meaning of this
22 section, solely due to the ownership or operation of that facility.

23 (h) The ownership, control, operation, or management of an
24 electric plant used for direct transactions or participation directly
25 or indirectly in direct transactions, as permitted by subdivision (b)
26 of Section 365, sales into a market established and operated by the
27 Independent System Operator or any other wholesale electricity
28 market, or the use or sale as permitted under subdivisions (b) to
29 (d), inclusive, of Section 218, shall not make a corporation or
30 person a public utility within the meaning of this section solely
31 because of that ownership, participation, or sale.

32 (i) The ownership, control, operation, or management of a
33 facility that supplies electricity to the public only for use to charge
34 light duty plug-in electric vehicles does not make the corporation
35 or person a public utility within the meaning of this section solely
36 because of that ownership, control, operation, or management. For
37 purposes of this subdivision, "light duty plug-in electric vehicles"
38 includes light duty battery electric and plug-in hybrid electric
39 vehicles. This subdivision does not affect the commission's
40 authority under Section 454 or 740.2 or any other applicable statute.

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