

AMENDED IN ASSEMBLY APRIL 29, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 197

Introduced by Assembly Member Eduardo Garcia

January 28, 2015

An act to amend Sections 399.13 and 399.15 of, and to add Section 636 to, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 197, as amended, Eduardo Garcia. Public utilities: renewable resources.

(1) The Public Utilities Act requires the Public Utilities Commission (PUC), in consultation with the Independent System Operator, to establish resource adequacy requirements for all load-serving entities, including electrical corporations, in accordance with specified objectives. The act further requires each load-serving entity to maintain physical generating capacity adequate to meet its load requirements, including peak demand and planning and operating reserves, deliverable to locations and at times as may be necessary to provide reliable electric service.

The California Renewables Portfolio Standard (RPS) Program, requires a retail seller of electricity and local publicly owned electric utilities to purchase specified minimum quantities of electricity products from eligible renewable energy resources for specified compliance periods, sufficient to ensure that the procurement of electricity products from those resources achieves 25% of retail sales by December 31, 2016 and 33% of retail sales by December 31, 2020, and in all

subsequent years. The RPS Program, consistent with the goals of procuring the least-cost and best-fit eligible renewable energy resources that meet project viability principles, requires that all retail sellers procure a balanced portfolio of electricity products from eligible renewable energy resources, as specified, referred to as the portfolio content requirements. The RPS Program requires the PUC, by rulemaking, to adopt a process that provides criteria for the rank ordering and selection of the least-cost and best-fit eligible renewable energy resources taking into account specified factors and to require an electrical corporation, in soliciting and procuring eligible renewable energy resources, to take specified actions. The RPS Program authorizes an electrical corporation to ~~refrain~~ *refrain* from entering into new contracts or constructing facilities beyond the quantity that can be procured within the cost limitation of the electrical corporation unless the eligible renewable energy resources can be procured without exceeding a de minimis increase in rates consistent with the electrical corporation's long-term procurement plan.

This bill would require the PUC, in adopting the process, to include consideration of any statewide greenhouse gas emissions limit established pursuant to the California Global Warming Solutions Act of 2006 and consideration of capacity and essential reliability services of the eligible renewable energy resource to ensure grid reliability. The bill would require the PUC to require ~~an electrical corporation~~, *a retail seller of electricity*, in soliciting and procuring eligible renewable energy resources, to consider the best-fit attributes of resources types that ensure a balanced resource mix to maintain the reliability of the electrical grid. The bill would revise the authority of an electrical corporation to refrain from entering into new contracts or constructing facilities beyond the quantity that can be procured within the electrical corporation's cost limitation, as specified.

(2) The Public Utilities Act requires an electrical corporation or a local publicly owned electric utility, in a long-term plan or a procurement plan, respectively, to adopt a strategy applicable both to a newly constructed or repowered generation owned and procured by the electrical corporation or local publicly owned electric utility to achieve efficiency in the use of fossil fuels and to address carbon emissions.

This bill would require an electrical corporation or local publicly owned electric utility, in adopting a procurement plan, to consider any statewide greenhouse gas emissions limit established pursuant to the

California Global Warming Solutions Act of 2006 and consider capacity and essential reliability services to ensure grid reliability.

(3) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the Public Utilities Commission is a crime.

Because the provisions of this bill are within the act, a violation of the requirements would impose a state-mandated local program by expanding the definition of a crime.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) *This bill would become operative only if AB 645 of the 2015–16 Regular Session is enacted and becomes effective on or before January 1, 2016.*

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

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

1 SECTION 1. Section 399.13 of the Public Utilities Code is
2 amended to read:

3 399.13. (a) (1) The commission shall direct each electrical
4 corporation to annually prepare a renewable energy procurement
5 plan that includes the matter in paragraph (5), to satisfy its
6 obligations under the renewables portfolio standard. To the extent
7 feasible, this procurement plan shall be proposed, reviewed, and
8 adopted by the commission as part of, and pursuant to, a general
9 procurement plan process. The commission shall require each
10 electrical corporation to review and update its renewable energy
11 procurement plan as it determines to be necessary.

12 (2) Every electrical corporation that owns electrical transmission
13 facilities shall annually prepare, as part of the Federal Energy
14 Regulatory Commission Order 890 process, and submit to the
15 commission, a report identifying any electrical transmission
16 facility, upgrade, or enhancement that is reasonably necessary to
17 achieve the renewables portfolio standard procurement
18 requirements of this article. Each report shall look forward at least
19 five years and, to ensure that adequate investments are made in a

1 timely manner, shall include a preliminary schedule when an
2 application for a certificate of public convenience and necessity
3 will be made, pursuant to Chapter 5 (commencing with Section
4 1001), for any electrical transmission facility identified as being
5 reasonably necessary to achieve the renewable energy resources
6 procurement requirements of this article. Each electrical
7 corporation that owns electrical transmission facilities shall ensure
8 that project-specific interconnection studies are completed in a
9 timely manner.

10 (3) The commission shall direct each retail seller to prepare and
11 submit an annual compliance report that includes all of the
12 following:

13 (A) The current status and progress made during the prior year
14 toward procurement of eligible renewable energy resources as a
15 percentage of retail sales, including, if applicable, the status of any
16 necessary siting and permitting approvals from federal, state, and
17 local agencies for those eligible renewable energy resources
18 procured by the retail seller, and the current status of compliance
19 with the portfolio content requirements of subdivision (c) of
20 Section 399.16, including procurement of eligible renewable energy
21 resources located outside the state and within the WECC and
22 unbundled renewable energy credits.

23 (B) If the retail seller is an electrical corporation, the current
24 status and progress made during the prior year toward construction
25 of, and upgrades to, transmission and distribution facilities and
26 other electrical system components it owns to interconnect eligible
27 renewable energy resources and to supply the electricity generated
28 by those resources to load, including the status of planning, siting,
29 and permitting transmission facilities by federal, state, and local
30 agencies.

31 (C) Recommendations to remove impediments to making
32 progress toward achieving the renewable energy resources
33 procurement requirements established pursuant to this article.

34 (4) The commission shall adopt, by rulemaking, all of the
35 following:

36 (A) A process that provides criteria for the rank ordering and
37 selection of least-cost and best-fit eligible renewable energy
38 resources to comply with the California Renewables Portfolio
39 Standard Program obligations on a total cost and best-fit basis.
40 This process shall take into account all of the following:

- 1 (i) Estimates of indirect costs associated with needed
2 transmission investments.
- 3 (ii) The cost impact of procuring the eligible renewable energy
4 resources on the electrical corporation's electricity portfolio.
- 5 (iii) The viability of the project to construct and reliably operate
6 the eligible renewable energy resource, including the developer's
7 experience, the feasibility of the technology used to generate
8 electricity, and the risk that the facility will not be built, or that
9 construction will be delayed, with the result that electricity will
10 not be supplied as required by the contract.
- 11 (iv) Workforce recruitment, training, and retention efforts,
12 including the employment growth associated with the construction
13 and operation of eligible renewable energy resources and goals
14 for recruitment and training of women, minorities, and disabled
15 veterans.
- 16 (v) (I) Estimates of electrical corporation expenses resulting
17 from integrating and operating eligible renewable energy resources,
18 including, but not limited to, any additional wholesale energy and
19 capacity costs associated with integrating each eligible renewable
20 resource.
- 21 (II) No later than December 31, 2015, the commission shall
22 approve a methodology for determining the integration costs
23 described in subclause (I).
- 24 (vi) Consideration of any statewide greenhouse gas emissions
25 limit established pursuant to the California Global Warming
26 Solutions Act of 2006 (Division 25.5 (commencing with Section
27 38500) of the Health and Safety Code).
- 28 (vii) Consideration of capacity and essential reliability services
29 of the eligible renewable energy resource to ensure grid reliability.
- 30 (B) Rules permitting retail sellers to accumulate, beginning
31 January 1, 2011, excess procurement in one compliance period to
32 be applied to any subsequent compliance period. The rules shall
33 apply equally to all retail sellers. In determining the quantity of
34 excess procurement for the applicable compliance period, the
35 commission shall deduct from actual procurement quantities the
36 total amount of procurement associated with contracts of less than
37 10 years in duration. In no event shall electricity products meeting
38 the portfolio content of paragraph (3) of subdivision (b) of Section
39 399.16 be counted as excess procurement.

1 (C) Standard terms and conditions to be used by all electrical
2 corporations in contracting for eligible renewable energy resources,
3 including performance requirements for renewable generators. A
4 contract for the purchase of electricity generated by an eligible
5 renewable energy resource, at a minimum, shall include the
6 renewable energy credits associated with all electricity generation
7 specified under the contract. The standard terms and conditions
8 shall include the requirement that, no later than six months after
9 the commission's approval of an electricity purchase agreement
10 entered into pursuant to this article, the following information
11 about the agreement shall be disclosed by the commission: party
12 names, resource type, project location, and project capacity.

13 (D) An appropriate minimum margin of procurement above the
14 minimum procurement level necessary to comply with the
15 renewables portfolio standard to mitigate the risk that renewable
16 projects planned or under contract are delayed or canceled. This
17 paragraph does not preclude an electrical corporation from
18 voluntarily proposing a margin of procurement above the
19 appropriate minimum margin established by the commission.

20 (5) Consistent with the goal of increasing California's reliance
21 on eligible renewable energy resources, the renewable energy
22 procurement plan submitted by an electrical corporation shall
23 include all of the following:

24 (A) An assessment of annual or multiyear portfolio supplies
25 and demand to determine the optimal mix of eligible renewable
26 energy resources with deliverability characteristics that may include
27 peaking, dispatchable, baseload, firm, and as-available capacity.

28 (B) Potential compliance delays related to the conditions
29 described in paragraph (5) of subdivision (b) of Section 399.15.

30 (C) A bid solicitation setting forth the need for eligible
31 renewable energy resources of each deliverability characteristic,
32 required online dates, and locational preferences, if any.

33 (D) A status update on the development schedule of all eligible
34 renewable energy resources currently under contract.

35 (E) Consideration of mechanisms for price adjustments
36 associated with the costs of key components for eligible renewable
37 energy resource projects with online dates more than 24 months
38 after the date of contract execution.

39 (F) An assessment of the risk that an eligible renewable energy
40 resource will not be built, or that construction will be delayed,

1 with the result that electricity will not be delivered as required by
2 the contract.

3 (6) In soliciting and procuring eligible renewable energy
4 resources, each electrical corporation shall offer contracts of no
5 less than 10 years duration, unless the commission approves of a
6 contract of shorter duration.

7 (7) In soliciting and procuring eligible renewable energy
8 resources for California-based projects, each electrical corporation
9 shall give preference to renewable energy projects that provide
10 environmental and economic benefits to communities afflicted
11 with poverty or high unemployment, or that suffer from high
12 emission levels of toxic air contaminants, criteria air pollutants,
13 and greenhouse gases.

14 (8) In soliciting and procuring eligible renewable energy
15 resources, each ~~electrical corporation~~ *retail seller* shall consider
16 the best-fit attributes of resource types that ensure a balanced
17 resource mix to maintain the reliability of the electrical grid.

18 (b) A retail seller may enter into a combination of long- and
19 short-term contracts for electricity and associated renewable energy
20 credits. The commission may authorize a retail seller to enter into
21 a contract of less than 10 years' duration with an eligible renewable
22 energy resource, if the commission has established, for each retail
23 seller, minimum quantities of eligible renewable energy resources
24 to be procured through contracts of at least 10 years' duration.

25 (c) The commission shall review and accept, modify, or reject
26 each electrical corporation's renewable energy resource
27 procurement plan prior to the commencement of renewable energy
28 procurement pursuant to this article by an electrical corporation.

29 (d) Unless previously preapproved by the commission, an
30 electrical corporation shall submit a contract for the generation of
31 an eligible renewable energy resource to the commission for review
32 and approval consistent with an approved renewable energy
33 resource procurement plan. If the commission determines that the
34 bid prices are elevated due to a lack of effective competition among
35 the bidders, the commission shall direct the electrical corporation
36 to renegotiate the contracts or conduct a new solicitation.

37 (e) If an electrical corporation fails to comply with a commission
38 order adopting a renewable energy resource procurement plan, the
39 commission shall exercise its authority pursuant to Section 2113
40 to require compliance. The commission shall enforce comparable

1 penalties on any retail seller that is not an electrical corporation
2 that fails to meet the procurement targets established pursuant to
3 Section 399.15.

4 (f) (1) The commission may authorize a procurement entity to
5 enter into contracts on behalf of customers of a retail seller for
6 electricity products from eligible renewable energy resources to
7 satisfy the retail seller's renewables portfolio standard procurement
8 requirements. The commission shall not require any person or
9 corporation to act as a procurement entity or require any party to
10 purchase eligible renewable energy resources from a procurement
11 entity.

12 (2) Subject to review and approval by the commission, the
13 procurement entity shall be permitted to recover reasonable
14 administrative and procurement costs through the retail rates of
15 end-use customers that are served by the procurement entity and
16 are directly benefiting from the procurement of eligible renewable
17 energy resources.

18 (g) Procurement and administrative costs associated with
19 contracts entered into by an electrical corporation for eligible
20 renewable energy resources pursuant to this article and approved
21 by the commission are reasonable and prudent and shall be
22 recoverable in rates.

23 (h) Construction, alteration, demolition, installation, and repair
24 work on an eligible renewable energy resource that receives
25 production incentives pursuant to Section 25742 of the Public
26 Resources Code, including work performed to qualify, receive, or
27 maintain production incentives, are "public works" for the purposes
28 of Chapter 1 (commencing with Section 1720) of Part 7 of Division
29 2 of the Labor Code.

30 SEC. 2. Section 399.15 of the Public Utilities Code is amended
31 to read:

32 399.15. (a) In order to fulfill unmet long-term resource needs,
33 the commission shall establish a renewables portfolio standard
34 requiring all retail sellers to procure a minimum quantity of
35 electricity products from eligible renewable energy resources as
36 a specified percentage of total kilowatthours sold to their retail
37 end-use customers each compliance period to achieve the targets
38 established under this article. For any retail seller procuring at least
39 14 percent of retail sales from eligible renewable energy resources
40 in 2010, the deficits associated with any previous renewables

1 portfolio standard shall not be added to any procurement
2 requirement pursuant to this article.

3 (b) The commission shall implement renewables portfolio
4 standard procurement requirements only as follows:

5 (1) Each retail seller shall procure a minimum quantity of
6 eligible renewable energy resources for each of the following
7 compliance periods:

8 (A) January 1, 2011, to December 31, 2013, inclusive.

9 (B) January 1, 2014, to December 31, 2016, inclusive.

10 (C) January 1, 2017, to December 31, 2020, inclusive.

11 (2) (A) No later than January 1, 2012, the commission shall
12 establish the quantity of electricity products from eligible
13 renewable energy resources to be procured by the retail seller for
14 each compliance period. These quantities shall be established in
15 the same manner for all retail sellers and result in the same
16 percentages used to establish compliance period quantities for all
17 retail sellers.

18 (B) In establishing quantities for the compliance period from
19 January 1, 2011, to December 31, 2013, inclusive, the commission
20 shall require procurement for each retail seller equal to an average
21 of 20 percent of retail sales. For the following compliance periods,
22 the quantities shall reflect reasonable progress in each of the
23 intervening years sufficient to ensure that the procurement of
24 electricity products from eligible renewable energy resources
25 achieves 25 percent of retail sales by December 31, 2016, and 33
26 percent of retail sales by December 31, 2020. The commission
27 shall require retail sellers to procure not less than 33 percent of
28 retail sales of electricity products from eligible renewable energy
29 resources in all subsequent years.

30 (C) Retail sellers shall be obligated to procure no less than the
31 quantities associated with all intervening years by the end of each
32 compliance period. Retail sellers shall not be required to
33 demonstrate a specific quantity of procurement for any individual
34 intervening year.

35 (3) The commission may require the procurement of eligible
36 renewable energy resources in excess of the quantities specified
37 in paragraph (2).

38 (4) Only for purposes of establishing the renewables portfolio
39 standard procurement requirements of paragraph (1) and
40 determining the quantities pursuant to paragraph (2), the

1 commission shall include all electricity sold to retail customers by
2 the Department of Water Resources pursuant to Division 27
3 (commencing with Section 80000) of the Water Code in the
4 calculation of retail sales by an electrical corporation.

5 (5) The commission shall waive enforcement of this section if
6 it finds that the retail seller has demonstrated any of the following
7 conditions are beyond the control of the retail seller and will
8 prevent compliance:

9 (A) There is inadequate transmission capacity to allow for
10 sufficient electricity to be delivered from proposed eligible
11 renewable energy resource projects using the current operational
12 protocols of the Independent System Operator. In making its
13 findings relative to the existence of this condition with respect to
14 a retail seller that owns transmission lines, the commission shall
15 consider both of the following:

16 (i) Whether the retail seller has undertaken, in a timely fashion,
17 reasonable measures under its control and consistent with its
18 obligations under local, state, and federal laws and regulations, to
19 develop and construct new transmission lines or upgrades to
20 existing lines intended to transmit electricity generated by eligible
21 renewable energy resources. In determining the reasonableness of
22 a retail seller's actions, the commission shall consider the retail
23 seller's expectations for full-cost recovery for these transmission
24 lines and upgrades.

25 (ii) Whether the retail seller has taken all reasonable operational
26 measures to maximize cost-effective deliveries of electricity from
27 eligible renewable energy resources in advance of transmission
28 availability.

29 (B) Permitting, interconnection, or other circumstances that
30 delay procured eligible renewable energy resource projects, or
31 there is an insufficient supply of eligible renewable energy
32 resources available to the retail seller. In making a finding that this
33 condition prevents timely compliance, the commission shall
34 consider whether the retail seller has done all of the following:

35 (i) Prudently managed portfolio risks, including relying on a
36 sufficient number of viable projects.

37 (ii) Sought to develop one of the following: its own eligible
38 renewable energy resources, transmission to interconnect to eligible
39 renewable energy resources, or energy storage used to integrate
40 eligible renewable energy resources. This clause shall not require

1 an electrical corporation to pursue development of eligible
2 renewable energy resources pursuant to Section 399.14.

3 (iii) Procured an appropriate minimum margin of procurement
4 above the minimum procurement level necessary to comply with
5 the renewables portfolio standard to compensate for foreseeable
6 delays or insufficient supply.

7 (iv) Taken reasonable measures, under the control of the retail
8 seller, to procure cost-effective distributed generation and allowable
9 unbundled renewable energy credits.

10 (C) Unanticipated curtailment of eligible renewable energy
11 resources necessary to address the needs of a balancing authority.

12 (6) If the commission waives the compliance requirements of
13 this section, the commission shall establish additional reporting
14 requirements on the retail seller to demonstrate that all reasonable
15 actions under the control of the retail seller are taken in each of
16 the intervening years sufficient to satisfy future procurement
17 requirements.

18 (7) The commission shall not waive enforcement pursuant to
19 this section, unless the retail seller demonstrates that it has taken
20 all reasonable actions under its control, as set forth in paragraph
21 (5), to achieve full compliance.

22 (8) If a retail seller fails to procure sufficient eligible renewable
23 energy resources to comply with a procurement requirement
24 pursuant to paragraphs (1) and (2) and fails to obtain an order from
25 the commission waiving enforcement pursuant to paragraph (5),
26 the commission shall exercise its authority pursuant to Section
27 2113.

28 (9) Deficits associated with the compliance period shall not be
29 added to a future compliance period.

30 (c) The commission shall establish a limitation for each electrical
31 corporation on the procurement expenditures for all eligible
32 renewable energy resources used to comply with the renewables
33 portfolio standard. In establishing this limitation, the commission
34 shall rely on the following:

35 (1) The most recent renewable energy procurement plan.

36 (2) Procurement expenditures that approximate the expected
37 cost of building, owning, and operating eligible renewable energy
38 resources.

39 (3) The potential that some planned resource additions may be
40 delayed or canceled.

1 (d) In developing the limitation pursuant to subdivision (c), the
2 commission shall ensure all of the following:

3 (1) The limitation is set at a level that prevents disproportionate
4 rate impacts.

5 (2) The costs of all procurement credited toward achieving the
6 renewables portfolio standard are counted towards the limitation.

7 (3) Procurement expenditures do not include any indirect
8 expenses, including imbalance energy charges, sale of excess
9 energy, decreased generation from existing resources, transmission
10 upgrades, or the costs associated with relicensing any utility-owned
11 hydroelectric facilities.

12 (e) (1) No later than January 1, 2016, the commission shall
13 prepare a report to the Legislature assessing whether each electrical
14 corporation can achieve a 33-percent renewables portfolio standard
15 by December 31, 2020, and maintain that level thereafter, within
16 the adopted cost limitations. If the commission determines that it
17 is necessary to change the limitation for procurement costs incurred
18 by any electrical corporation after that date, it may propose a
19 revised cap consistent with the criteria in subdivisions (c) and (d).
20 The proposed modifications shall take effect no earlier than January
21 1, 2017.

22 (2) Notwithstanding Section 10231.5 of the Government Code,
23 the requirement for submitting a report imposed under paragraph
24 (1) is inoperative on January 1, 2021.

25 (3) A report to be submitted pursuant to paragraph (1) shall be
26 submitted in compliance with Section 9795 of the Government
27 Code.

28 (f) If the cost limitation for an electrical corporation is
29 insufficient to support the projected costs of meeting the
30 renewables portfolio standard procurement requirements, the
31 electrical corporation may refrain from entering into new contracts
32 or constructing facilities beyond the quantity that can be procured
33 within the limitation, unless eligible renewable energy resources
34 can be procured without exceeding a de minimis increase in rates
35 or to the extent that the procurement of renewable energy resources,
36 separate from the renewables portfolio standard procurement
37 requirements, is authorized by the commission for the long-term
38 procurement plan established for the electrical corporation pursuant
39 to Section 454.5.

1 (g) (1) The commission shall monitor the status of the cost
2 limitation for each electrical corporation in order to ensure
3 compliance with this article.

4 (2) If the commission determines that an electrical corporation
5 may exceed its cost limitation prior to achieving the renewables
6 portfolio standard procurement requirements, the commission shall
7 do both of the following within 60 days of making that
8 determination:

9 (A) Investigate and identify the reasons why the electrical
10 corporation may exceed its annual cost limitation.

11 (B) Notify the appropriate policy and fiscal committees of the
12 Legislature that the electrical corporation may exceed its cost
13 limitation, and include the reasons why the electrical corporation
14 may exceed its cost limitation.

15 (h) The establishment of a renewables portfolio standard shall
16 not constitute implementation by the commission of the federal
17 Public Utility Regulatory Policies Act of 1978 (Public Law
18 95-617).

19 SEC. 3. Section 636 is added to the Public Utilities Code, to
20 read:

21 636. In a procurement plan adopted by an electrical corporation
22 or a local publicly owned electric utility, the electrical corporation
23 or local publicly owned electric utility shall give consideration to
24 both of the following:

25 (a) Any statewide greenhouse gas emissions limit established
26 pursuant to the California Global Warming Solutions Act of 2006
27 (Division 25.5 (commencing with Section 38500) of the Health
28 and Safety Code).

29 (b) Capacity and essential reliability services to ensure grid
30 reliability.

31 SEC. 4. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within
38 the meaning of Section 6 of Article XIII B of the California
39 Constitution.

1 *SEC. 5. This act shall become operative only if Assembly Bill*
2 *645 of the 2015–16 Regular Session is enacted and becomes*
3 *effective on or before January 1, 2016.*

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