

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1299

Introduced by Senator Hertzberg

(Coauthors: Assembly Members Dodd and Eduardo Garcia)

February 19, 2016

An act to amend ~~Section~~ *Sections 399.13 and 399.21* of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

SB 1299, as amended, Hertzberg. California Renewables Portfolio Standard Program: renewable energy credits.

The California Renewables Portfolio Standard Program requires the Public Utilities Commission to establish a ~~renewables~~ *renewables* portfolio standard requiring all retail sellers, as defined, to procure a minimum quantity of electricity products from eligible renewable energy resources, as defined, at specified percentages of the total kilowatthours sold to their retail ~~end-customers~~ *end-use customers* during specified compliance periods. The program additionally requires each local publicly owned electric utility, as defined, to procure a minimum quantity of electricity products from eligible renewable energy resources to achieve the targets established by the program. *The 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 program requires the commission to authorize the use of renewable energy credits to satisfy the renewables portfolio standard procurement requirements, subject to specified ~~conditions~~. *conditions and limitations for unbundled*

renewable energy credits. One condition placed on renewable energy credits is that they not be created for electricity generated under any electricity purchase contract executed after January 1, 2005, pursuant to the federal Public Utility Regulatory Policies Act of 1978, also known as PURPA.

This bill would ~~make nonsubstantial revisions to the requirement that the commission authorize the use of renewable energy credits to satisfy the renewables portfolio standard procurement requirements.~~ require that renewable energy credits be created for electricity generated under an electricity purchase contract executed after January 1, 2017, pursuant to PURPA, with those credits being owned by the owner of the eligible renewable energy resource unless otherwise agreed to by the owner. The bill would prohibit the commission from requiring, as a condition of entering into an electricity purchase contract pursuant to PURPA, that the generator sell its renewable energy credits to the electrical corporation pursuant to the contract. The bill would provide that when electricity products and the renewable energy credits associated with those electricity products are sold to the same electrical corporation pursuant to 2 or more separate purchase contracts with identical start and end dates, the credits and electricity products would be treated as bundled.

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

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

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.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-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. The commission
12 shall require all other retail sellers to prepare and submit renewable
13 energy procurement plans that address the requirements identified
14 in paragraph (5).

15 (2) Every electrical corporation that owns electrical transmission
16 facilities shall annually prepare, as part of the Federal Energy
17 Regulatory Commission Order 890 process, and submit to the
18 commission, a report identifying any electrical transmission
19 facility, upgrade, or enhancement that is reasonably necessary to
20 achieve the renewables portfolio standard procurement
21 requirements of this article. Each report shall look forward at least
22 five years and, to ensure that adequate investments are made in a
23 timely manner, shall include a preliminary schedule when an
24 application for a certificate of public convenience and necessity
25 will be made, pursuant to Chapter 5 (commencing with Section
26 1001), for any electrical transmission facility identified as being
27 reasonably necessary to achieve the renewable energy resources
28 procurement requirements of this article. Each electrical
29 corporation that owns electrical transmission facilities shall ensure
30 that project-specific interconnection studies are completed in a
31 timely manner.

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

35 (A) The current status and progress made during the prior year
36 toward procurement of eligible renewable energy resources as a
37 percentage of retail sales, including, if applicable, the status of any
38 necessary siting and permitting approvals from federal, state, and

1 local agencies for those eligible renewable energy resources
2 procured by the retail seller, and the current status of compliance
3 with the portfolio content requirements of subdivision (c) of
4 Section 399.16, including procurement of eligible renewable energy
5 resources located outside the state and within the WECC and
6 unbundled renewable energy credits.

7 (B) If the retail seller is an electrical corporation, the current
8 status and progress made during the prior year toward construction
9 of, and upgrades to, transmission and distribution facilities and
10 other electrical system components it owns to interconnect eligible
11 renewable energy resources and to supply the electricity generated
12 by those resources to load, including the status of planning, siting,
13 and permitting transmission facilities by federal, state, and local
14 agencies.

15 (C) Recommendations to remove impediments to making
16 progress toward achieving the renewable energy resources
17 procurement requirements established pursuant to this article.

18 (4) The commission shall adopt, by rulemaking, all of the
19 following:

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

25 (i) Estimates of indirect costs associated with needed
26 transmission investments.

27 (ii) The cost impact of procuring the eligible renewable energy
28 resources on the electrical corporation's electricity portfolio.

29 (iii) The viability of the project to construct and reliably operate
30 the eligible renewable energy resource, including the developer's
31 experience, the feasibility of the technology used to generate
32 electricity, and the risk that the facility will not be built, or that
33 construction will be delayed, with the result that electricity will
34 not be supplied as required by the contract.

35 (iv) Workforce recruitment, training, and retention efforts,
36 including the employment growth associated with the construction
37 and operation of eligible renewable energy resources and goals
38 for recruitment and training of women, minorities, and disabled
39 veterans.

1 (v) (I) Estimates of electrical corporation expenses resulting
2 from integrating and operating eligible renewable energy resources,
3 including, but not limited to, any additional wholesale energy and
4 capacity costs associated with integrating each eligible renewable
5 resource.

6 (II) No later than December 31, 2015, the commission shall
7 approve a methodology for determining the integration costs
8 described in subclause (I).

9 (vi) Consideration of any statewide greenhouse gas emissions
10 limit established pursuant to the California Global Warming
11 Solutions Act of 2006 (Division 25.5 (commencing with Section
12 38500) of the Health and Safety Code).

13 (vii) Consideration of capacity and system reliability of the
14 eligible renewable energy resource to ensure grid reliability.

15 (B) Rules permitting retail sellers to accumulate, beginning
16 January 1, 2011, excess procurement in one compliance period to
17 be applied to any subsequent compliance period. The rules shall
18 apply equally to all retail sellers. In determining the quantity of
19 excess procurement for the applicable compliance period, the
20 commission shall retain the rules adopted by the commission and
21 in effect as of January 1, 2015, for the compliance period specified
22 in subparagraphs (A) to (C), inclusive, of paragraph (1) of
23 subdivision (b) of Section 399.15. For any subsequent compliance
24 period, the rules shall allow the following:

25 (i) For electricity products meeting the portfolio content
26 requirements of paragraph (1) of subdivision (b) of Section 399.16,
27 contracts of any duration may count as excess procurement.

28 (ii) Electricity products meeting the portfolio content
29 requirements of paragraph (2) or (3) of subdivision (b) of Section
30 399.16 shall not be counted as excess procurement. Contracts of
31 any duration for electricity products meeting the portfolio content
32 requirements of paragraph (2) or (3) of subdivision (b) of Section
33 399.16 that are credited towards a compliance period shall not be
34 deducted from a retail seller's procurement for purposes of
35 calculating excess procurement.

36 (iii) If a retail seller notifies the commission that it will comply
37 with the provisions of subdivision (b) for the compliance period
38 beginning January 1, 2017, the provisions of clauses (i) and (ii)
39 shall take effect for that retail seller for that compliance period.

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 *Except as provided in paragraph (5) of subdivision (a) of Section*
5 *399.21, a contract for the purchase of electricity generated by an*
6 *eligible renewable energy resource, at a minimum, shall include*
7 *the renewable energy credits associated with all electricity*
8 *generation specified under the contract. The standard terms and*
9 *conditions shall include the requirement that, no later than six*
10 *months after the commission's approval of an electricity purchase*
11 *agreement entered into pursuant to this article, the following*
12 *information about the agreement shall be disclosed by the*
13 *commission: party names, resource type, project location, and*
14 *project capacity.*

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

22 (5) Consistent with the goal of increasing California's reliance
23 on eligible renewable energy resources, the renewable energy
24 procurement plan shall include all of the following:

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

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

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

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

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

1 (F) An assessment of the risk that an eligible renewable energy
2 resource will not be built, or that construction will be delayed,
3 with the result that electricity will not be delivered as required by
4 the contract.

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

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

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

20 (b) A retail seller may enter into a combination of long- and
21 short-term contracts for electricity and associated renewable energy
22 credits. Beginning January 1, 2021, at least 65 percent of the
23 procurement a retail seller counts toward the renewables portfolio
24 standard requirement of each compliance period shall be from its
25 contracts of 10 years or more in duration or in its ownership or
26 ownership agreements for eligible renewable energy resources.

27 (c) The commission shall review and accept, modify, or reject
28 each electrical corporation's renewable energy resource
29 procurement plan prior to the commencement of renewable energy
30 procurement pursuant to this article by an electrical corporation.
31 The commission shall assess adherence to the approved renewable
32 energy resource procurement plans in determining compliance
33 with the obligations of this article.

34 (d) Unless previously preapproved by the commission, an
35 electrical corporation shall submit a contract for the generation of
36 an eligible renewable energy resource to the commission for review
37 and approval consistent with an approved renewable energy
38 resource procurement plan. If the commission determines that the
39 bid prices are elevated due to a lack of effective competition among

1 the bidders, the commission shall direct the electrical corporation
2 to renegotiate the contracts or conduct a new solicitation.

3 (e) If an electrical corporation fails to comply with a commission
4 order adopting a renewable energy resource procurement plan, the
5 commission shall exercise its authority to require compliance.

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

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

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

25 (h) Construction, alteration, demolition, installation, and repair
26 work on an eligible renewable energy resource that receives
27 production incentives pursuant to Section 25742 of the Public
28 Resources Code, including work performed to qualify, receive, or
29 maintain production incentives, are “public works” for the purposes
30 of Chapter 1 (commencing with Section 1720) of Part 7 of Division
31 2 of the Labor Code.

32 **SECTION 1.**

33 *SEC. 2.* Section 399.21 of the Public Utilities Code is amended
34 to read:

35 399.21. (a) The commission, by rule, shall authorize the use
36 of renewable energy credits to satisfy the renewables portfolio
37 standard procurement requirements established pursuant to this
38 article, subject to the following conditions:

39 (1) The commission and the Energy Commission shall ensure
40 that the tracking system established pursuant to subdivision (c) of

1 Section 399.25, is operational, is capable of independently
2 verifying that electricity earning the credit is generated by an
3 eligible renewable energy resource, and can ensure that renewable
4 energy credits shall not be double counted by any seller of
5 electricity within the service territory of the WECC.

6 (2) Each renewable energy credit shall be counted only once
7 for compliance with the renewables portfolio standard of this state
8 or any other state, or for verifying retail product claims in this state
9 or any other state.

10 (3) All revenues received by an electrical corporation for the
11 sale of a renewable energy credit shall be credited to the benefit
12 of ratepayers.

13 (4) Renewable energy credits shall not be created for electricity
14 generated pursuant to any electricity purchase contract with a retail
15 seller or a local publicly owned electric utility executed before
16 January 1, 2005, unless the contract contains explicit terms and
17 conditions specifying the ownership or disposition of those credits.
18 Procurement under those contracts shall be tracked through the
19 accounting system described in subdivision (b) of Section 399.25
20 and included in the quantity of eligible renewable energy resources
21 of the purchasing retail seller pursuant to Section 399.15.

22 ~~(5) Renewable energy credits shall not be created for electricity~~
23 ~~generated under any electricity purchase contract executed after~~
24 ~~January 1, 2005, pursuant to the federal Public Utility Regulatory~~
25 ~~Policies Act of 1978 (16 U.S.C. Sec. 2601 et seq.). Procurement~~
26 ~~under the electricity purchase contracts shall be tracked through~~
27 ~~the accounting system implemented by the Energy Commission~~
28 ~~pursuant to subdivision (b) of Section 399.25 and count toward~~
29 ~~the renewables portfolio standard procurement requirements of~~
30 ~~the purchasing retail seller.~~

31 *(5) Renewable energy credits shall be created for electricity*
32 *generated by an eligible renewable energy resource pursuant to*
33 *an electricity purchase contract executed on or after January 1,*
34 *2017, pursuant to the federal Public Utility Regulatory Policies*
35 *Act of 1978 (16 U.S.C. Sec. 2601 et seq.), also known as PURPA.*
36 *The renewable energy credit shall be owned by the owner of the*
37 *eligible renewable energy resource unless otherwise agreed to by*
38 *the owner. The commission shall not require, as a condition of*
39 *entering into an electricity purchase contract pursuant to PURPA,*
40 *that the generator sell its renewable energy credits to the electrical*

1 *corporation pursuant to the contract. Electricity products and the*
 2 *renewable energy credits associated with those electricity products*
 3 *that are sold to the same electrical corporation pursuant to two*
 4 *or more separate purchase contracts that contain identical start*
 5 *and end dates shall be classified as meeting the portfolio content*
 6 *category of paragraph (1) of subdivision (b) of Section 399.16.*

7 (6) Nothing in the amendments to this article made by the Clean
 8 Energy and Pollution Reduction Act of 2015 (Chapter 547 of the
 9 Statutes of 2015) is intended to change commission Decision
 10 11-12-052 (December 15, 2011), Decision Implementing Portfolio
 11 Content Categories For The Renewables Portfolio Standard
 12 Program, regarding the classification of renewable energy credits
 13 from generation on the customer side of the meter.

14 (7) A renewable energy credit shall not be eligible for
 15 compliance with a renewables portfolio standard procurement
 16 requirement unless it is retired in the tracking system established
 17 pursuant to subdivision (c) of Section 399.25 by the retail seller
 18 or local publicly owned electric utility within 36 months from the
 19 initial date of generation of the associated electricity.

20 (b) The commission shall allow an electrical corporation to
 21 recover the reasonable costs of purchasing, selling, and
 22 administering renewable energy credit contracts in rates.

23 *SEC. 3. No reimbursement is required by this act pursuant to*
 24 *Section 6 of Article XIII B of the California Constitution because*
 25 *the only costs that may be incurred by a local agency or school*
 26 *district will be incurred because this act creates a new crime or*
 27 *infraction, eliminates a crime or infraction, or changes the penalty*
 28 *for a crime or infraction, within the meaning of Section 17556 of*
 29 *the Government Code, or changes the definition of a crime within*
 30 *the meaning of Section 6 of Article XIII B of the California*
 31 *Constitution.*